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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
IN ACCORDANCE WITH ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States Parties
due in 1993

Addendum

TUNISIA */

[23 March 1993]

*/ For the initial report submitted by the Government of Tunisia, see document CCPR/C/Add.7/Rev.1, for its consideration by the Committee, see documents CCPR/C/SR.28 and 29, and Official Records of the General Assembly, Thirty-second session, Supplement No.44 (A/32/44), paras. 119-126. For the second periodic report submitted by Tunisia, see document CCPR/C/28/Add.5/Rev.1, for its consideration by the Committee, see documents CCPR/C/SR.712-SR.715, and Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40), paras. 105-148. For the third periodic report submitted by Tunisia, see document CCPR/C/52/Add.5, for its consideration by the Committee, see documents CCPR/C/SR.990-992, and Official Records of the General Assembly, Forty-fifth session, Supplement No.40 (A/45/40), paras. 495-537.

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INTRODUCTION

1. The present periodic report on the implementation of the International Covenant on Civil and Political Rights covers the period 1989-1993 and corresponds to the four years which followed the political changes introduced in Tunisia after 7 November 1987, the date on which, in strict compliance with constitutional legality, President Zine El Abidine Ben Ali was elevated to the highest office. As a result of that event, Tunisia entered upon a new era founded upon respect of human dignity, the promotion of human rights and the consolidation of a State ruled by law and of its institutions.

2. The movement which started on that date signalled the country's emergence from the profound economic, social and political crisis that had engulfed it during the preceding years. It ushered in a project for a new society - a society ruled by tolerance and openness based upon respect for individual and collective fundamental freedoms.

3. The declaration which proclaimed these new orientations, since named "Declaration of the 7th of November", resolutely launched Tunisia upon a process of comprehensive change which has furthered the growth of democracy and has been reflected in the liberalization of economic and political life which is taking place at a sustained rate and in a context of harmony and cohesion.

4. The past four years have been marked by the continuing implementation of the structural reforms envisaged in the programme of economic recovery upon which our country embarked five years ago. These reforms have made it possible for Tunisia to contain inflation, reduce its external debt, its unemployment and its budget deficit, develop a competitive economy open to the outside world and introduce convertibility of the national currency.

5. Tunisia's good performance during this period is all the more remarkable as it occurred in an unfavourable world economic situation marked by the economic recession and the serious monetary and stock exchange upheavals which destabilized the most powerful economies. The annual growth rate of 8.4 per cent in 1992 made it possible for the performance of 1992 to surpass the estimates of the economic budget and of the Eighth Plan, which had been set at 6.5 per cent and 7.9 per cent, respectively.

6. In his opening statement at the Regional Meeting for Africa held at Tunis in November 1992 as part of the preparations for the World Conference on Human Rights, the President of the Republic said: "Our nation-building philosophy is founded upon freedom and democracy (...). Our supreme goal continues to be to guarantee full enjoyment of human rights, whether civil and political or economic, social and cultural."

7. Our approach is a global one and we are engaged in a process of coherent and irreversible change. Furthermore, starting from the fact that all rights are interdependent and complementary, and out of a concern to guarantee maximum and equal opportunities for all citizens, Tunisia has concentrated its efforts on guaranteeing the right to food, employment, health, education, housing, social security, the protection of children and the family and the emancipation of women, as well as the freedom of opinion, expression and information, the

equality of all persons, non-discrimination and the right to organize for political and other purposes.

8. On the occasion of the first anniversary of 7 November, the President of the Republic said: "We are firmly resolved to make Tunisia a State truly ruled by law, a State where the law takes precedence over everything else ... No one, whatever his rank in the hierarchy of authority, shall be above the law."

9. In order to consolidate the rule of law - which means supremacy of the Constitution, respect of legality and, above all, subordination of political power to the authority of the law - Tunisia has undertaken a series of measures. Among them we may cite the following:

(a) The amendment of the Constitution of 1 June 1959. The first concern of the new political leadership after the November 1987 changes was to restore the Tunisian Constitution of 1959 (several times amended) in its original form and thus to comply with the options and principles laid down by the Constitution's authors in 1959, namely, that sovereignty belongs to the people, which exercises it through free elections. The constitutional review of 25 July 1988 abolished the life presidency and the automatic succession of the Prime Minister in the event of the death of the President of the Republic.

- Constitutional Law No.88-88 of 25 July 1988 amending the Constitution provides that the President of the Republic shall be elected for a five year term in a free, direct and secret ballot by universal suffrage. He is re-eligible for two consecutive terms.

- The new article 57 provides as follows: "In the event of the Presidency of the Republic falling vacant by reason of death, resignation or absolute impediment, the President of the Chamber of Deputies shall immediately be vested with the power of Acting President of the Republic for a period of not less than 45 days and no more than 60 days. He shall be sworn in before the Chamber of Deputies or, as the case may be, before the Bureau of the Chamber of Deputies.

- The Acting President of the Republic may not put himself forward as a candidate to the Presidency of the Republic even in the event of resignation.

- The Acting President of the Republic shall exercise the powers vested in the President of the Republic, without, however, being able to call a referendum, dissolve the Chamber of Deputies or take the exceptional measures provided under article 46.

- During this period, no motion of censure may be brought against the Government.

- During the same period, presidential elections shall be held to elect a new President of the Republic for a term of five years.

- The new President of the Republic may dissolve the Chamber of Deputies and hold early legislative elections in conformity with the provisions of the second paragraph of article 63."

(b) Abolition of the State Security Court and of the post of Procurator-General of the Republic (Acts Nos. 87-79 and 87-80 of 29 December 1987).

(c) Abolition of the penalty of forced labour under the Code of Penal Procedure and the Code of Military Justice and its replacement by a penalty of imprisonment (Act No. 89-23 of 27 February 1989, published in the Journal Officiel of the Tunisian Republic, No. 17, of 7 March 1989).

(d) The adoption of new provisions in the Code of Penal Procedure limiting the length of custody and of pre-trial detention. Article 13 bis added to the Code of Penal Procedure by the Act of 26 November 1987 limits the period of custody by the judicial police to four days. This period may be extended, by a decision in writing taken by the Public Prosecutor, initially for a further four days, and in the event of absolute necessity for a further period of only two days. The period of custody cannot therefore exceed 10 days. During custody or on completion of custody, the person concerned or his parents or children or his spouse may as a matter of right request a medical examination.

10. The compulsory noting of the date and time when any questioning begins and ends is an essential safeguard against any form of violence or torture. The legislature has stressed the exceptional and limited character of pre-trial detention. With the exception of cases of flagrante delicto in which the Public Prosecutor combines the functions of pre-trial examination and prosecution, examining magistrates alone may order the detention of an accused person.

11. The period of pre-trial detention was limited by the Act of 26 November 1987 to six months. Paragraph 3 of article 85 of the Code of Penal Procedure, as amended by the aforementioned Act, provides for the possibility for examining magistrates, with the concurrence of the Public Prosecutor, to renew the period of detention once in the case of a misdemeanour and twice in the case of a felony. However, magistrates can take such a decision only through a substantiated order appealable only through the indictment division, which must reach a decision within eight days from the date of transmission of the file.

12. This measure, which is designed to guarantee respect for human dignity and the strengthening of human rights, has always characterized the action of the public authorities. Accordingly, the Council of Ministers, meeting on 4 November 1992, adopted a set of measures to consolidate these rights. The new provisions are calculated in particular to reduce the period of pre-trial detention both for misdemeanours and for felonies and to shorten the time-limits for trying cases in which persons have been placed in detention.

13. Measures taken to promote human rights and to ensure their application in practice have also been reinforced by the creation of a Constitutional Council

and of various legal and administrative structures and mechanisms designed to consolidate the rule of law.

(a) Creation, by Act No. 90-39 of 18 April 1990, of a Constitutional Council to consider draft legislation submitted to it by the President of the Republic prior to their transmission to the Chamber of Deputies and to advise on the conformity or compatibility of such legislation with the Constitution. The Council must be consulted on draft legislation pertaining to the general modalities of application of the Constitution, nationality, personal status, obligations and other matters relating to public freedoms and human rights.

(b) Establishment, by Decree No. 91-54 of 7 January 1991, of the Higher Committee of Human Rights and Fundamental Freedoms. This Committee is responsible inter alia for assisting the President of the Republic in his efforts to consolidate and promote human rights at both the national and the international levels. To that end, it advises on the questions referred to it and submits proposals and specific programmes on any matter which it deems likely to encourage the promotion and protection of human rights.

The Higher Committee also considers complaints and grievances sent in by individuals or the families of individuals claiming to be victims of human rights violations. It transmits these communications to the competent authorities for answering.

The Committee is composed of independent persons of high standing who are members of the trade union organizations and the associations as well as representatives of the authorities concerned; however, the latter do not have the right to vote when decisions are adopted.

Decree No. 92-2141 of 10 December 1992 amended and supplemented Decree No. 91-54 of 7 January 1991 concerning the Committee referred to above. Article 2 bis of the Decree of 10 December 1992 provides that "by special mandate of the President of the Republic, the Chairman of the Committee shall visit the prisons, jails and centres for the shelter or observation of minors in order to ascertain the extent to which the laws and regulations concerning custody, imprisonment and the shelter or observation of minors are being respected. After each inspection visit, the Chairman of the Committee shall submit a report to the President".

(c) Appointment, as from 19 June 1991, of a principal human rights adviser to the President of the Republic. The adviser is responsible inter alia for informing the President about the human rights situation in Tunisia. He also supervises the studies on the application of the human rights policy of the President. He advises on international human rights conventions and monitors the work of international and regional bodies involved in human rights, as well as the activities of non-governmental organizations.

(d) Establishment of human rights offices or units within the Ministries of Justice, the Interior, Foreign Affairs and Social Affairs and the State Information Office. These units, acting in close cooperation with one another, deal with human rights matters, prepare Tunisia's reports to various

international bodies, and ensure an improved flow of information on human rights.

(e) Creation, on 10 December 1992, of the post of ombudsman to the President of the Republic. The ombudsman receives complaints from individuals concerning administrative matters affecting them which fall within the purview of State services, local authorities, public institutions, public enterprises or other public service bodies. Decree No. 92-2143 of 10 December 1992 establishing this new institution provides in paragraph 2 of its article 6 that "in each case, the ombudsman must be informed within a prescribed time limit of action taken following his intervention. In the absence of response within the time limit set by him, the ombudsman may bring the matter to the attention of the President of the Republic in the form of a report accompanied by his recommendations."

(f) Establishment, on 18 January 1993, of a team of "Citizen Supervisors". Decree No. 93-147 of 18 January 1993 creating this new institution provides in its article 1 that "a team shall be established within the Office of the Prime Minister to test the quality of the public service". Its members are required to engage in dealings with the public services like ordinary citizens in order to test the quality of service in administrative offices and to observe the manner in which public officials serve the public. The "Citizen Supervisor" exercises his duties in government offices, public institutions, local authority offices and generally in all bodies directly or indirectly controlled by the State or by local authorities. The institution of the Citizen Supervisors' team forms part of the administrative reform undertaken by the State following the November 1987 changes and is specially intended to improve the services offered to citizens by the administration.

14. Tunisia has ratified several international instruments on human rights. Today it leads the field among African countries and worldwide is among the countries which have done most to introduce international standards for the protection of human rights in their national legislations. In particular, it has ratified the two International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment without entering any reservation in respect of the last-mentioned instrument but making the declaration under its article 21 and 22 authorizing the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of torture or ill-treatment. Tunisia submitted its first report to the Committee on 25 April 1990.

15. The above-mentioned measures are among the main steps taken by Tunisia in the field of consolidation of human rights. They have been backed by the adoption of other, no less important measures aimed at consolidating the basis for a consensual democracy. Since 7 November the new regime has striven to achieve national reconciliation in the broadest sense and to normalize relations between political power and various political trends while at the same

time fostering a climate of confidence and serenity between the citizens and the public authorities. The object of these measures is to enable all citizens freely to contribute towards the work of developing and constructing a democratic society founded upon human rights, tolerance and mutual respect.

16. National reconciliation has been reflected in the reconciliation of the State with the country's identity as a civilization. Action in this sphere has included the rehabilitation of the "Zitouna" University, the Arabization of public instruction and the revival of respect for Muslim traditions. Reconciliation has also been concretized by successive pardons and reductions of penalties affecting 12,000 prisoners in various categories. It was further consolidated by the concerted elaboration of a National Covenant, signed on 7 November 1988 and endorsed by all the country's political trends as well as by professional organizations and associations. The Covenant is an expression of national consensus on a number of principles and values which constitute the foundations of a tolerant, democratic society oriented towards progress and the full recognition of all individual rights. A Higher Council of the National Covenant was established in 1991 to promote dialogue between the country's democratic political forces. In February 1992 that body was transformed into a Higher Committee of the National Covenant meeting periodically under the chairmanship of the Prime Minister to consider matters of national importance and to advise the President of the Republic.

17. Our efforts since 7 November 1987 have also been directed at reviving the principles of democratic legality based upon respect of the law and political pluralism as the guarantor of the invulnerability of the State and respect of human rights. In a speech on 26 February 1988, the President of the Republic said: "The change which took place on 7 November, far from being merely a change of cast or of facade, was a change that restored the power of enterprise and creativity to our people, our elites, our youth." It was this will that has led the public authorities to take steps in order to give effect to the commitments undertaken in the Declaration of 7 November, and in particular the following:

(a) The creation on 3 May 1988 of a specific legal framework for political parties, elaborated after consultations with the parties and other existing political trends and inspired by the principles set forth in the International Covenant on Civil and Political Rights and other international instruments. The right to form parties is recognized and guaranteed so long as it is exercised with due respect of the republican nature of the State and of the principle of the sovereignty of the people; is used towards the preservation of national achievements, especially with regard to personal law, equality between the sexes and protection of children; eschews violence and fanaticism; and is not based upon religious, racial, regional or language considerations. The parties are: the Democratic Constitutional Union, the Socialist Democrats' Movement, the Tunisian Communist Party, the Popular Unity Party, the Socialist Party for Progress, the Progressive Socialist Union and the Democratic Unionist Union.

(b) The amendment on 2 August 1988 of the Associations Act of 7 November 1959 replacing the system of prior authorization by that of declaration. The new Act gives citizens the right to form associations on the basis of a simple declaration to the competent authorities. After a period of two months from the submission of the declaration and in the case of silence on the part of the administration, "the association shall be legally constituted

and may then exercise its activities as from the publication of an extract of the association's internal regulations in the Journal Officiel of the Tunisian Republic" (new art. 4). Similarly, the suspension procedure now carries a time-limit, and dissolution concerns only the most serious cases. Whether suspension or dissolution is involved, the decision is taken by the judge only. An amendment to the Associations Act designed to guarantee the independence of associations and to shield them from political dissensions and partisan struggles was adopted on 2 April 1992. Since 7 November 1987 the life of associations in Tunisia has undergone unprecedented development. During the short time that has elapsed, more than 1,300 new associations have been formed, bringing the total up to approximately 6,000.

18. Other measures have also been taken. They pertain to the strengthening of existing bodies such as the Economic and Social Council and the creation of several higher bodies connected with political life to a greater or lesser degree. The objective sought by the Government is to involve all parties in the running of public affairs.

19. This will is clearly reflected in the following:

(a) Strengthening of the powers and role of the Economic and Social Council. The Council is an advisory body established by the Constitution. Its powers have been strengthened twice, on 7 May 1988 and on 7 August 1990. Thanks to its membership (all political trends and social categories are represented), the Council plays a major role in the defence and reinforcement of citizens' rights, and especially of economic and social rights. It must be consulted on draft legislation of an economic or social nature. It advises on economic development plans and on the modalities of their implementation. It submits an annual report to the President of the Republic.

(b) The establishment, by Decree No.89-238 of 30 January 1989, of the Higher Council for Communication. That decree was recently amended and expanded by Decree No. 92-1758 of 5 October 1952, which broadened the Council's powers and strengthened its membership by the incorporation of additional expert members in a spirit of pluralism and on the sole basis of professional competence.

(c) The revision, on two occasions, of the Electoral Code (Organic Laws Nos. 88-144 of 29 December 1988 and 90-48 of 4 May 1990) through the introduction of guarantees for enrolment on electoral lists and, above all, through the introduction of modulated proportional representation with the aim of promoting the representation of smaller parties on municipal councils. This amendment has made it possible for independent candidates to stand in municipal elections. It also provides the possibility for candidates whose names appear on electoral lists to be reimbursed, subject to certain conditions, for expenses incurred by them in the course of the electoral campaign. Furthermore, and in anticipation of the forthcoming parliamentary elections in April 1994, the President of the Republic announced in a statement before the Chamber of Deputies on 27 December 1992 that the polling system for parliamentary elections is to be amended. The purpose of the amendment is to ensure that the monopoly situation which has prevailed in Parliament since independence will be replaced by political pluralism within the Chamber of Deputies.

(d) The Amendment of the Press Code, which has introduced a guarantee of great importance: the administration can no longer suspend a periodical. That power now falls exclusively within the competence of the judiciary. A single offending issue may, however, be seized by the administration if it is considered likely to disturb law and order.

20. The consolidation of human rights does not stop with the promulgation of laws. The Government's concern with human rights and with strengthening the foundations of civil society is far from being an opportunistic response to a demand limited to a specific moment in time. It is reflected in the dissemination of the culture of human rights, not only in schools and secondary and higher educational establishments, but also among State officials responsible for applying the law. Thus, a reform of the public education system has been undertaken with a view to enabling schools to dispense an education based on the promotion of human rights and the eschewal of extremism and all forms of fanaticism.

21. Within the same framework, intensive cooperation and regular dialogue have been established between the Tunisian Government and certain non-governmental organizations, including Amnesty International, which share Tunisia's objectives in the matter of the promotion and protection of human rights. This concern for cooperation has found expression more particularly since 1988, the year when a branch of Amnesty International was opened in Tunisia. Tunis is nowadays an important centre for several NGOs, including the Arab Human Rights Institute, Greenpeace, El-Taller and the African Committee for Law and Development. The will for cooperation expressed by the public authorities in respect of Amnesty International, whose Secretary-General had an interview with the President of the Republic in July 1992, did not prevent that organization from publishing in March 1992 a report on the human rights situation in Tunisia and, in October 1992, a report on the trial of fundamentalists in Tunisia.

22. On 20 March 1992 the Government answered the allegations contained in the first of the above-mentioned documents, expressing its surprise at both the tone and the contents of the report. It did not deny that certain abuses had been committed by individuals. It pointed out, however, that systematic human rights abuses enjoying the backing of the authorities never take place in Tunisia. Despite the report's partisan and subjective character, Tunisia once more expressed its readiness to cooperate with Amnesty International in order to ensure that all allegations of human rights violations in Tunisia were examined in a precise and objective manner.

23. On 15 October 1992 the Tunisian Government replied to the communication addressed to it by Amnesty International on 22 September in connection with the "Bouchoucha" and "Bab Saadoun" trials. Thus clarification has been provided on the various points raised by Amnesty International in its report.

24. The Tunisian Government has, moreover, consistently cooperated with the appropriate United Nations structures dealing with human rights issues. It has answered the communications addressed to it by the Special Rapporteurs of the Commission on Human Rights and by some of the Commission's working groups. Its tireless efforts in the field of promotion and protection of human rights has been rewarded by recognition on the part of the international community, which elected Tunisia, successively, to the Vice-Chairmanship of the

forty-eighth session of the Commission on Human Rights (March 1992) and to the Chairmanship of the Commission's forty-ninth session (March 1993).

25. Tunisia also hosted the eleventh session of the African Commission on Human and Peoples' Rights in March 1992. It was chosen by the Preparatory Committee for the World Conference on Human Rights as the venue for the Regional Meeting for Africa held in preparation for the Conference (Tunis, 2-6 November 1992), whose work was crowned with success.

26. Tunisia is at present represented on several United Nations bodies dealing with human rights, including, in particular, the Committee against Torture, the Subcommission on Prevention of Discrimination and Protection of Minorities, the Commission on Crime Prevention and Criminal Justice, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of All Forms of Discrimination against Women.

I. RESPECT FOR GENERAL COMMITMENTS

A. Article 1. Right of peoples to self-determination

27. After acceding to independence in 1956, the Tunisian people applied itself to defining the fundamental features of its political universe, in particular through the proclamation of the Republic on 25 July 1957, the adoption of a Constitution on 1 June 1959, and the setting up of the institutions essential to a modern State.

28. Likewise, the Tunisian people has laboured to achieve the gradual recovery of its wealth and natural resources with the aim of being able to dispose of them freely. Furthermore, the Tunisian State has embarked upon the path of international economic cooperation on the basis of the principle of mutual benefit and in accordance with the rules of international law.

29. In signing and ratifying the International Covenant on Civil and Political Rights, Tunisia regards the obligation deriving from article 1 (3) as binding, namely, that the Tunisian State, like all States parties, is required to promote the realization of the right of self-determination and to respect that right, in conformity with the provisions of the Charter of the United Nations. Since independence, the Government and people of Tunisia have considered that to be a sacred duty and have committed themselves wholeheartedly to that path. The Constitution asserts the determination of the Tunisian people to remain faithful to "cooperation with the peoples struggling for justice and freedom". Tunisia has contributed various kinds of aid - political and diplomatic as well as financial and material - to all peoples fighting for their independence and against apartheid. It has experienced in its own flesh the consequences of its determination to respect its obligation and witnessed the bombardment of one of its own villages, Sakiet Sidi Youssef, because of Tunisia's unreserved support to the people of Algeria in their struggle for independence. It was that same determination which on 1 October 1985 made it the victim of an act of aggression perpetrated by the Israeli air force in bombing the civilian locality of Hammam Plage and of the aggression perpetrated on the national territory and the assassination by an Israeli commando of a Palestinian personality, a member of the Palestinian Liberation Organization

whom Tunisia had taken in like all the other Palestinian refugees hounded from their native land by Israel. Tunisia, which permanently and consistently supports the cause of the Palestinian people and encourages it to pursue the path of peace negotiations, has officially expressed its entire readiness to host the working group on refugees within the framework of the multilateral negotiations in progress.

30. Tunisia has championed the cause of Namibia's independence by consistently supporting the Namibian people, granting financial aid to SWAPO and contributing to the United Nations Fund for Namibia, and participating in the United Nations mission of assistance during the transitional period. Tunisia and Namibia established diplomatic relations on 23 March 1990. Furthermore, the Tunisian Government has always fought against apartheid and all other forms of foreign domination in other parts of the world. It has consistently granted material and moral assistance to Black anti-apartheid nationalist movements and, first and foremost, to the African National Congress (ANC) and its leader, Nelson Mandela. The fraternal relations and solidarity established with the ANC over the past three decades have found reflection, in particular, in:

- the official visit of Mr. Nelson Mandela to Tunisia from 19 to 21 January 1992 and other visits by the ANC leadership;

- the authorization for the opening of an ANC mission in Tunis and the undertaking given by Tunisia on the occasion of Mr. Mandela's visit that the Tunisian Treasury will take care of the mission's operating costs.

31. Tunisia will continue to fight against apartheid and all other forms of foreign domination in the rest of the world. It is persuaded that without the full implementation of article 1 of the Covenant, the rights and freedoms covered by the other articles will have no real scope or will be precarious and inadequately protected.

B. Article 2. Respect for human rights and guarantees concerning remedies

32. In accordance with article 2 of the Covenant, the States Parties undertake to ensure to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant, without distinction of any kind, as well as remedies against any violation of those rights.

33. On acceding to the International Covenant on Civil and Political Rights, Tunisia, without entering reservations or making statements of interpretation, reaffirmed the declaration of the framers of the 1959 Constitution "to remain faithful to the human values common to the peoples which cherish human dignity, justice and freedom and which working for peace, progress and free cooperation among nations". Since the declaration of 7 November, the question of human rights has not ceased to gain importance to the detriment of concerns of a political and economic nature. A series of important reforms have resulted, all of them tending to strengthen the rights and freedoms of citizens in all domains.

34. Tunisia's general commitment under that article to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, takes its origins from the Constitution itself. As will be explained in the comments on articles 6 et seq. of the Covenant, the fundamental human rights recognized and guaranteed by the Constitution are so recognized and guaranteed for everyone, without any distinction and without reference to race, colour, sex, language, religion, political or other opinions, national or social origin, wealth or birth. This is true of article 5, which guarantees the inviolability of the individual, freedom of conscience and freedom of religious worship, article 8 concerning freedom of opinion, expression, the press, publication, assembly and association and the right to form trade unions, article 9 concerning the inviolability of the home and secrecy of correspondence, article 12 concerning the presumption of innocence of every accused person, article 13 concerning the personal nature of penalties and the non-retroactivity of criminal law, article 14 concerning the right of ownership and article 17 prohibiting the extradition of political refugees. There is no distinction between citizens, as article 6 of the Constitution states when it provides that "All citizens are equal with respect to their rights and duties. They are equal before the law".

35. Tunisia has also acceded to a number of human rights conventions, particularly on non-discrimination. They have been incorporated into the internal legal order in the manner explained in paragraph 11, and confirm and stipulate in greater detail the prohibition of the various forms of discrimination. We shall have occasion to mention the human rights conventions which Tunisia has ratified when we come to comment on the other articles of the Covenant.

36. Under article 2 (2) of the Covenant States undertake to take the necessary steps, in accordance with their constitutional processes and with the provisions of the Covenant, to give effect to the rights recognized in the Covenant. It should be noted in this connection that the Constitution calls upon the legislature to take the necessary legislative measures to regulate human rights. It is the law which makes these rights operative and furnishes procedures to ensure respect for them. This is also true of the rights recognized by the Covenant, where they have not already been provided for by the Constitution. In this regard, by means of progressive development, Tunisia has introduced procedures to give full effect to human rights, whether provided for by the Constitution or by the International Covenant on Civil and Political Rights or by the various human rights conventions which it has ratified. In this regard nothing is immutable, since a broad-ranging movement of human rights reform has been begun since 7 november 1987. Such reforms would be an addition to and a development of this issue in relation to what already exists.

In this respect, a series of laws has been promulgated throughout the year 1988:

(a) The law modifying certain articles of the Code of Penal Procedure relating to police custody and pre-trial detention (Act No. 87-70 of 26 November 1987);

(b) The law regarding the abolition of the penalty of forced labour (Act No. 89-23 of 27 February 1989);

(c) The law organizing political parties (Act No. 88-32 of 3 May 1988);

(d) The law modifying and completing the law on associations (Act No. 88-90 of 2 August 1988);

(e) The law modifying and completing the Press Code (Act No. 88-89 of 2 August 1988).

(f) The law modifying the Electoral Code (Act of 4 May 1990);

(g) Publication of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (Journal Officiel of the Republic of Tunisia of 13 December 1990);

(h) Establishment of the Higher Committee of Human Rights and Fundamental Freedoms (Decree No. 91-54 of 7 January 1991);

(i) Establishment of the post of Principal Human Rights Adviser to the President of the Republic (19 June 1991);

(j) Decree on the publication of the United Nations Convention on the Rights of the Child (Decree No. 91-1865 of 10 December 1991).

37. The Tunisian legal system is developing parallel machinery to guarantee the freedoms recognized by the Covenant against any form of violation. Criminal justice is based on the rule of the territoriality of laws. Tunisian criminal law applies throughout Tunisian territory. Any injured party whose right is safeguarded by criminal law benefits from automatic protection. The lawmakers consider that if there is a violation of law and order, it is society itself that takes up the matter through the prosecution brought by the Public Prosecutor's Office. Article 1 of the Code of Penal Procedure provides that "any offence shall give rise to public proceedings having as their purpose the imposition of a penalty and, if an injury has been caused, to a civil suit with a view to obtaining compensation therefor." In civil matters, the Code of Civil and Commercial Procedure provides the elements necessary to determine the competence ratione materiae of Tunisian courts to deal with civil or commercial matters.

38. The Tunisian lawmakers have constantly developed the possibilities of judicial remedies. The Administrative Tribunal Act of 1 June 1972 provides in article 3 that the Tribunal is competent to rule on appeals for annulment of acts by the administrative authorities. Article 5 of the Act states that such appeals are intended to ensure, in accordance with the law, the regulations in force and general legal principles, respect for legality by the executive authorities. In addition, the State may incur civil liability even when it acts as a public authority, if its representatives, agents or officials have caused material or moral damage to others. The injured party may call upon the State to compensate for the injury (Decree of 27 November 1888 and article 84 of the Code of Obligations and Contracts). This is without prejudice to the direct liability of such officials vis-à-vis the injured parties. As stated in the

comments on articles 7 and 9, the Penal Code sanctions officials who, in the performance of their duties unlawfully violate the individual freedom of a third party or practice violence against individuals. The development of the possibilities of legal remedy is set out in detail under the comments on article 14 of the Covenant.

39. If a person has an interest in legal action, his application will be recognized as well-founded; the law then requires judges to pass judgement; refusal to do justice on any pretext whatsoever, even that of the silence or obscurity of the law, is deemed to be an offence of denial of justice (article 108 of the Penal Code).

40. It is worth noting that a number of commissions are at present engaged in preparing the revision of legal texts which govern the organization of justice in general. The work of these commissions will result in the reform of the Penal Code, the Code of Penal Procedure, the Code of Civil and Commercial Procedure and the Personal Status Code.

C. Article 3. Equal rights of men and women

41. Under article 3 of the Covenant, States undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

42. Equality between men and women is proclaimed in the preamble to the Constitution and in article 6 thereof, which states that: "All citizens are equal with respect to their rights and duties. They are equal before the law." Actually, even before the promulgation of the Constitution, the principle of equality had already been acknowledged by the Personal Status Code of 1956. It is confirmed in the National Covenant, which provides that "the principle of equality, that is to say of equality among citizens, men and women, without discrimination, is no less important that the principle of liberty."

43. Tunisia has ratified and published in the Journal Officiel (Decree No. 91-1821 of 25 November 1991) the Convention on the Elimination of All Forms of Discrimination against Women, which is based upon this principle.

44. At the political level, the percentage of participation by women in the Chamber of Deputies today is 4.25 per cent (6 women among a total of 141 deputies, with a woman occupying the post of Second Deputy Speaker). The corresponding figure for municipal councillors is 14 per cent. For the Economic and Social Council, to the Vice-Chairmanship of which a woman was recently elected, it is 11 per cent (10 women out of 113 members).

45. The political will to promote women to decision-making posts has found expression in the appointment of women to the posts of Secretary of State for Women's and Family Affairs, Secretary of State for Social Welfare, Adviser on Women's Affairs to the President of the Republic, and officers responsible for matters pertaining to the rights of women in several Ministries.

46. The right to marry is recognized for men and women without any reservation based on discrimination of any kind. This principle, which emerges from the provisions of the Personal Status Code, was confirmed by Tunisia's ratification in 1967 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.

47. The principle of free consent of both the woman and the man is clearly set forth in article 3, first paragraph, of the Code of Personal Status which states: "Marriage shall not be concluded save with the consent of both spouses". Article 21 of the Code declares null and void any marriage contracted without the consent of one of the two spouses. Is it necessary to recall that, before the promulgation of the Code of Personal Status, marriage was concluded once there had been an exchange of consent between the future husband and the father of the girl? The guardian of the bride had a veritable right of matrimonial constraint which authorized him to impose the marriage on her. As for the marriage of a widow or a divorced woman, it was true that it could not be concluded without her consent but her intent was not sufficient and the approval of her father or, in his absence, of her nearest male relative was necessary to conclude the marriage.

48. Under the Code of Personal Status, the future spouses must have attained a minimum age fixed by article 5 for their consent to be valid, namely, 20 years of age for men and 17 years of age for women. If the woman is less than 20 years' old, the consent of her guardian is required. The legislature was attempting, in this way, to free the bride from the pressures that were common before independence, when the marriage of girls under the age of puberty was a very widespread practice.

49. A revision of the Personal Status Code is currently in progress. It will grant to the mother the right to consent to the marriage of her minor daughter. Under the law in force at present that privilege belongs exclusively to the father and, where there is no father, to a legally appointed male member of his family. Thus the reform provides for equal participation of the participants in deciding upon the future of their children. The effect of the reform will undoubtedly be to limit the father's authority, which until now has been predominant.

50. One of the most significant aspects of the new reform is, however, the emancipation of the minor daughter through marriage. The current situation in this respect is somewhat illogical, since the woman, albeit married, has to be assisted by her father in connection with any act involving the law until her legal majority. If she wishes to divorce, the action is not admissible unless it is brought by her father. In order to remedy this inconsistency, the draft legislation provides for the woman's emancipation through marriage in respect of all matters pertaining to her matrimonial status. She may, on her own behalf, bring an action for divorce, alimony or maintenance of her children, open a bank account in her name or for the benefit of her children, etc.

51. The Nationality Code confers on a Tunisian woman married to a foreigner several rights that are linked with nationality. Before independence, she was not capable of giving her nationality either to her children or to her husband. Article 6 of the Nationality Code specified the cases in which a Tunisian mother married to a foreigner can give her nationality to her children: if her child is born in Tunisia (third paragraph), or if its father is unknown, of unknown

nationality or of no nationality. What is more, article 12 of the same Code gives the foreign child born to a Tunisian mother and a foreign father the opportunity of acquiring Tunisian nationality through the legal method of a simple application by the person concerned in the course of the year preceding his majority.

52. A new draft revision of the Nationality Code enables a Tunisian woman married to a non-Tunisian to give her nationality to her children even if they were not born in Tunisia. In addition, the foreign husband of a Tunisian woman can become Tunisian by naturalization and will be exempted from the requirement of a period of probation provided that the household is resident in Tunisia at the time the request is made. On the other hand, in the case of a foreign woman married to a Tunisian man, she can obtain Tunisian nationality through the legal method of a simple declaration, provided that the household has been resident in Tunisia for at least two years (article 14 of the Code). Moreover, a foreign woman marrying a Tunisian man acquires Tunisian nationality at the time of the celebration of the marriage when, by virtue of her national law she loses her original nationality by marrying a foreigner (article 13 of the Code). A Tunisian father gives his nationality once and for all to his child, whatever the circumstances.

53. To sum up, nationality can be acquired through either the mother or the father. There are some differences concerning the conditions for such acquisition. The differences are minimal and they are disappearing. The principle has been established: a woman can give her nationality to her husband or her children. In this connection it should be pointed out that Tunisia has ratified the Convention on the Nationality of Married Women.

54. The prohibition of polygamy by the Code of Personal Status and the establishment of monogamous marriage constitute further evidence of the principle of the equality of men and women. Polygamy, which was the most flagrant and most unjust manifestation of inequality between the spouses, has become an offence punishable by the criminal law. What is more, the new union is declared null and void. Polyandry is also prohibited.

55. In its concern for equality, the legislature has opted for the separation of properties system and article 24 of the Code of Personal Status provides that "the husband has no power to administer the personal property of his wife". The latter enjoys full legal personality on the same footing as her husband. Book X of the Code ("Incapacitation and emancipation") quotes the reasons for incapacitation which are common to both women and men, without mentioning any specific reason which is peculiar to the former. The reasons in question are minority, lunacy, feeble-mindedness and prodigality.

56. As regards the custody of children, the legislature amended articles 57 et seq. of the Code of Personal Status in 1966 to specify not only that, during marriage the custody devolves upon the father and the mother but that, in the event of termination of the marriage by death, custody devolves upon the survivor, whether father or mother, and that, in the case of dissolution of the marital bond by divorce, custody shall be granted to the mother, the father or a third person in the light of the child's interest. In 1981, an Act amended article 154 of the Code of Personal Status to grant the guardianship of the minor child to the mother as of right in the event of the death or incapacity of the father. Before that reform, guardianship was

exercised in the event of the father's death by the guardian established by his will or appointed by the court.

57. These measures are corroborated by other measures relating to custody. The Personal Status Code in its present version provides that the legal guardian is always the father and that the mother may exercise guardianship only upon the father's death (articles 154 and 155 of the Personal Status Code) or in the event of the father's incapacitation on grounds of lunacy, feeble-mindedness or prodigality (article 160 of the Code) or, lastly, in the event of his conviction to more than two years' imprisonment for one crime (article 34 of the Penal Code).

58. This means that the father alone exercises guardianship for as long as he is alive. The problem arises essentially in the event of divorce, as the mother generally has care and control of the children while custody is exercised exclusively by the father. The father's frame of mind is often the decisive factor.

59. The new reform also provides that in the event of divorce, the judge may grant guardianship to the mother entrusted with care and control of her children in the event of the father's absence or insolvency or in the event that he abuses his rights with the intention of harming his former spouse by actions contrary to the interests of the children.

60. The regulations concerning the dissolution of the marital bond are based on the principle of the equality of men and women. However, some special measures have been provided for the benefit of the wife in order to safeguard her rights. Before the promulgation of the Code of Personal Status, the dissolution of the marital bond during the lifetime of the spouses was a matter entirely for the husband, who had only to express his will. By article 30 of the Code, divorce has become a judicial process. It may be pronounced by the court on the joint application of both the spouses or on the application of either one on the grounds of injury suffered or, lastly, on the application of one of them without grounds. In the two latter cases, the spouse having suffered a material or moral injury has a right to compensation. However, Act No. 81-7 of 18 February 1981 established special machinery for the compensation of the material harm suffered by the wife, amending article 31 of the Code of Personal Status to that end. Such harm is to be compensated by means of an allowance payable monthly on an appointed day, as from the end of the transitional period, according to the standard of living, including housing, to which she had become accustomed during her married life. This allowance may be revised upwards or downwards in accordance with fluctuations in the cost of living. It ceases to be payable on the death of the divorced woman or if certain changes occur in her status through remarriage or if she is no longer in need. If the divorced man dies, the allowance becomes a claim on his estate and must be settled in a single payment. A divorced woman can opt for the allowance to be paid to her in the form of a single lump sum.

61. The political will to protect the family and especially the children was concretised by the decision of the President of the Republic, announced by him in a speech made on the occasion of Women's Day on 13 August 1992, to establish a fund guaranteeing the payment of allowances and alimony decided upon by the judge for the benefit of divorced women and their children and required of the spouse sentenced to pay the amounts in question. This measure is warranted by

the unwillingness of many fathers to pay these amounts, which sometimes has a most negative effect upon the lives of divorced women and their children. The provision will enter into force as from next year. The President of the Republic has also recommended the provision of training in women's rights for judges and experts in personal status matters, as well as the establishment of special family courts.

62. Some penal provisions have been introduced to protect women and establish their rights on the same footing as those of men. This is the case with the offence of concealment of a child, of which either the mother or the father can be guilty. Act No. 62-22 of 24 may 1962 is designed, in particular, to protect a divorced woman against the abduction of a child of which she has custody or of its failure to appear during visits or any prevention of the exercise of her right to visit. Moreover, article 236 of the Penal Code - which protected a husband against an adulterous wife and enabled him to prosecute her in court - was amended in 1968 to make adultery a criminal offence, whether committed by the wife or by the husband.

63. The distance that has been travelled with regard to personal status in the direction of the equality of men and women is an impressive one. Nevertheless, there are some provisions of the Code of Personal Status which reveal certain inequalities, though these are inherent in the functions of the husband and the wife within the household rather than indicative of a retrograde attitude.

(a) Article 23 of the Code of Personal Status, which is a veritable family charter, provides that:

> "The husband shall treat his wife with benevolence, and live on good terms with her. He shall take care not to inflict any injury on her.
>
> He shall defray the expenses of the household and provide for the needs of his wife and children to the extent of his ability and according to his wife's circumstances. The wife shall contribute to the expenses of the household if she possesses any property.
>
> The wife shall respect her husband's prerogatives as head of the family and, to this extent, shall owe obedience to him."

Article 23 of the Code of Personal Status has thus measured out the mutual rights and duties of the two spouses and some people see therein a relic of the inferior status of women. On more careful examination of the article, however, it may be concluded that the legislature has chosen a perfectly accurate terminology: prerogatives are attached to a function rather than to a privileged spouse;

(b) Article 38 regulates the husband's maintenance obligation. He must maintain his wife after the consummation of the marriage and, in the event of divorce, during the transitional period between judicial recognition of the breakdown of the marriage and its legal termination.

(c) Article 40 adds that, if the husband being without resources leaves his wife without providing for her maintenance and if nobody is providing for it during his absence, the court shall allow the husband a period of one month to return and, once that period has elapsed, shall pronounce a divorce. Article 41 provides that, if the wife maintains herself from her own funds pending a petition against her absent husband, she can take an action against him. Article 42 states that a wife's claim of maintenance is not subject to prescription.

64. It is that which might, perhaps, explain certain privileges granted to the husband with respect to nationality, as explained above to the choice of residence and to guardianship. Some people see in this the explanation if not the justification of the inequality between men and women with regard to succession, the historical origin of which is to be found in the provisions of Muslim law. It emerges from articles 93 et seq. of the Code of Personal Status that the male heir receives twice the successional share normally reserved for his female co-heiress. Nevertheless, the importance of the women's rights recognized by the Code of Personal Status cannot be denied. It might even be asserted that the content of Tunisian positive law corresponds to the level of emancipation effectively attained by the Tunisian woman of today. We should not forget the link of cause and effect which exists between law and the society which produces it or, in other words, the circumstances and social and economic peculiarities of a community.

65. In order to create a climate for the total and complete emancipation of women, the public authorities have been striving since independence to build up all the factors conducive to the disappearance of the last inequalities. Thus the first concern of the young Tunisian State was to guarantee women's right to education. Act No. 58-118 relating to Education, of 4 November 1958, lists among the purposes that education and instruction are to achieve in Tunisia that of enabling "all children of both sexes", without distinction as to race, religion or social condition, to develop their personalities and their natural aptitudes". Article 2 of the same Act provides: "All children of six years of age and over shall have access to education and instruction." Lastly, with a view to ensuring that all children have equal chances and opportunities with regard to instruction and education, the said Act provides that teaching will be provided free of charge at all levels (article 3).

66. The Act on the educational system of 29 July 1991, which repeals all provisions inconsistent with the present law, states that the object of the educational system is, inter alia, to prepare young people for a life that has no room for any kind of discrimination based on sex, social origin or religion. The Act introduces for the first time the concept of a right to education and the principle of compulsory schooling and reaffirms the option of free education. It condemns parents who oblige their children to leave school before the age of 16 years. This new provision will be beneficial essentially to girls, who remain the great victims of illiteracy and of inequality of access to education.

67. Current statistics show that students of female sex accounted for 45.75 per cent of the number of primary students, 43.1 per cent of secondary students and 39.4 per cent of students in higher education in 1991. Furthermore, a programme against illiteracy, designed especially for women, has come into operation for the coming five years. It will primarily affect young

women aged between 15 and 29 years with the object of reducing the illiteracy rate in this age group from 30 per cent in 1971 to 17.2 per cent in 1996.

68. As for equality with respect to employment, this is guaranteed by labour legislation and collective agreements. What is more, Tunisia ratified in 1959 ILO Convention No. 111, the Discrimination (Employment and Occupation) Convention. This Convention forbids any discrimination based on sex the effect of which is to destroy or impair equality of opportunities or of pay in employment or occupational matters. The President of the Republic has emphasized this fundamental law on more than one occasion. In a speech on 13 August 1992 he said: "Work is the key to the advancement of women. A woman's work is a great asset to herself, to the family and to society".

69. Today, Tunisian women are working as clerks and as managing directors and in the professions. There are no restrictions upon them. As regards the civil service, the Civil Servants' General Status Act (Act No. 83-112 of 12 December 1983) establishes equality between the two sexes with respect to the conditions of recruitment, work and remuneration and its article 11 affirms that no distinction is to be made between the two sexes. Nevertheless, the same article 11 leaves open the possibility of making certain exceptions which are necessitated by the nature of the post. Nowadays, when women are to be found in the army and the police force, this is merely an academic provision without practical significance.

70. Certain arrangements in the conditions of employment for mothers of families are specified by the law and regulations to allow for their particular situation. Thus, the Civil Servants' General Status Act permits the female civil servant to take a maternity leave of two months which can be combined with annual leave. After the maternity leave, she may be entitled to a post-natal leave of four months (article 48 of the Act of 12 December 1983). The General Status Act permits the female civil servant to apply for leave without pay for two years, renewable twice, in order to bring up her children who are less than six years old or suffering from illnesses which require continuous care. Leave without pay does not cause the civil servant in question to lose her seniority and pension rights. Under the terms of the leave without pay, the administrative department is required to give the civil servant back her original post. More or less similar provisions are included in the regulations concerning women employed in public corporations. Furthermore, night work for women is no longer prohibited but merely limited and regulated in accordance with the additional protocol to ILO Convention No. 89.

71. The pension scheme specifies that female civil servants or employees of public corporations may apply for early retirement when they have more than three children below the age of twenty, or one heavily handicapped child. All these arrangements for the benefit of women, which have been described in the comments on article 3 of the Covenant, were prompted by a desire to make equality of men and women effective.

72. Since the changes of 7 November 1987, the network of women's associations has expanded considerably. In addition to the National Union of Tunisian Women, which has made a valuable contribution to the success of all activities in favour of women, new associations have been created, such as the Association of Tunisian Women for Research and Development, established in 1988, the Tunisian Democratic Women's Association (1989) and the National Chamber of

Women Managing Directors (1990). Women are also represented on various national commissions dealing with questions of national importance (Commission on Women and Development, Commission of Reflection on Legislative Texts Affecting Women). A Women's Research, Study and Documentation Centre was established on 7 August 1990. Since 8 March 1993, the headquarters of the Arab Women's Training and Research Centre has been located in Tunis.

D. Article 4. Derogations in time of public emergency

73. Article 4 of the International Covenant on Civil and Political Rights provides that, in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties may take measures derogating from their obligations under the Covenant. In the same spirit, article 46 of the Constitution provides for a state of emergency which implies a special procedure and specifies how the President of the Republic can adopt measures of derogation so as to cope with an emergency threatening the country. Article 46 provides: "In case of imminent danger threatening the institutions of the Republic and the security and independence of the country and impeding the proper functioning of the machinery of government, the President of the Republic can take exceptional measures required by the circumstance after consultation with the Prime Minister and the President of the Chamber of Deputies: ... These measures cease to be valid after the ending of the circumstances which gave rise to them...".

74. Although differently worded, article 4 of the Covenant and article 46 of the Constitution both permit exceptional measures to be taken for a limited period and for valid reasons. Since the presentation of the last report by Tunisia, these provisions have not been applied.

E. Article 5. Safeguard clauses

75. Despite its general wording, the safeguard clause included in article 5 of the Covenant is clearly designed to prevent any deliberately mistaken interpretation of other articles of the Covenant which could be cited to justify the violation of rights recognized by the Covenant or broader limitations than it provides on the exercise of those rights. Such an eventuality is unlikely in Tunisia. It has been pointed out that the rights recognized by the Covenant are prescribed by the Constitution, which is at the top of the hierarchy of legal rules, and consequently no provisions at a lower level, not to mention any interpretation, could violate the rights proclaimed by the Constitution (cf. para. 8). Moreover, as was mentioned in paragraph 11, the International Covenant on Civil and Political Rights has been incorporated into Tunisian law and thus carries greater legal weight than individual acts and is binding upon judges. It should be noted, in that connection, that the bill concerning political parties obliges them, on pain of dissolution, to respect and defend the achievements of the nation since independence, as well as human rights.

76. Any hypothesis concerning the application in Tunisia of restrictions to or derogations from the basic human rights recognized in the country on the pretext that the Covenant does not recognize them or recognizes them to a lesser extent is likewise excluded. This is due, in the first place, to the fact that the

fundamental human rights are recognized by the Constitution itself and, secondly, to a consistent Tunisian policy of acceding to the various human rights conventions which enlarge still further the application of such rights and, thirdly, to a very alert national conscience which is particularly sensitive to human rights matters.

PART II. RESPECT FOR COMMITMENTS CONCERNING RIGHTS RECOGNIZED BY THE COVENANT

A. Article 6. Right to life

77. Article 6 of the Covenant guarantees every human being the right to life. Positive law has made protection of the safety of the individual and more particularly his physical integrity a basic principle of public freedoms. As provided for by article 5 of the Constitution, the inviolability of the individual signifies first and foremost protection against any attempt on his life. Tunisian law protects the right to life through the imposition of the penalties provided for in the Penal Code on all who make any attack on life; these penalties range from imprisonment to the death penalty. As will be explained in the comments on this article, the type of penalty varies according to a number of factors such as the element of intent, the circumstances of the crime, and the status of the perpetrator of the crime or of the victim. A number of offences regarded as constituting a danger to the life and safety of the community carry the death penalty. Although capital punishment is part of the Tunisian penal system, practice shows that its application is very limited. The legislature has also drawn up very detailed regulations concerning the use of weapons by law enforcement officials in order to protect human life.

(a) The Penal Code protects life from the moment of conception. Article 214 of the Code prescribes a penalty of five years' imprisonment and/or a fine for anyone who, by the use of foodstuffs, beverages, medicinal drugs or any other means, procures or attempts to procure the abortion of a woman who is or is thought to be pregnant, whether or not she has given her consent;

(b) A woman who procures or attempts to procure an abortion, or who consents to make use of means indicated or administered to her for the purpose, is liable to two years' imprisonment and/or a fine;

(c) However, considering the importance which society attaches to the health of the mother and to birth control with a view to encouraging happy and balanced families, the legislature has authorized the artificial termination of a pregnancy, although only within the first three months and provided that it is carried out in a hospital or nursing home, or in an approved clinic, by a doctor legally practising his profession (article 214 (3) of the Penal Code);

(d) Once the foetus has reached three months, termination of the pregnancy is only possible in two cases: when the health of the mother or her mental balance are likely to be endangered by continuation of the pregnancy or when there is a risk of the child being born with a disease or a serious infirmity. In any event, the pregnancy may only be terminated in an approved establishment on presentation of a report from the woman's doctor to the doctor who is to perform the operation (article 214, (4) and (5) of the Penal Code);

(e) Article 9 of the Penal Code provides that any condemned woman who is found to be pregnant shall not be executed until after delivery.

78. In addition, infanticide - the murder of a child by its mother at or immediately after birth - is punishable by 10 years' hard labour (article 211). The legislature has taken into account the special circumstances in which unmarried mothers, in particular, may find themselves; most often they are victims of their ignorance of the legislation which protects them by providing for the possibility of an abortion in appropriate public establishments and the development of a system for the protection of children which will be described in the comments on article 24 of the Covenant.

79. The legislature has prescribed the death penalty for some murders which are of a particularly odious nature or are carried out after mature consideration in the following cases:

(a) Murder committed wilfully with premeditation (article 201 of the Penal Code). Premeditation is the intention, formulated prior to the deed, to make an attempt on the life of another person (article 202);

(b) Parricide (article 205) or the murder of a father, mother or any other family member of an older generation;

(c) Wilful homicide preceded, accompanied or followed by another offence involving a penalty of hard labour or imprisonment, or when its object was to prepare, facilitate or carry out such an offence, or to aid the escape or ensure the impunity of its perpetrators or accomplices (new article 204);

(d) The kidnapping, abduction, forcible removal, detention or illegal restraint of persons, accompanied or followed by death (new articles 237 and 251);

(e) The hijacking of a means of land, sea or air transport resulting in the death of one or more persons (new article 306 bis).

80. Otherwise than in the above cases, wilful homicide is punishable by life imprisonment. Involuntary homicide is generally punished, depending on the circumstances, by 20 years' imprisonment or life imprisonment (articles 205 and 208 new).

(a) Certain circumstances may, however, convert this penalty into life imprisonment, for example when a child has been abandoned by its father, mother or any other person responsible for it, and the death of the child has ensued (new article 213);

(b) The status of the perpetrator may also affect the determination of the penalty. One example is the murder by a husband of his wife or her lover at the time when he catches them in the act of committing adultery (article 207);

a murder of this nature is punishable by five years' imprisonment, but case law interprets the instantaneous aspect very restrictively.

81. (a) Involuntary homicide committed or caused through clumsiness, imprudence, negligence, carelessness or non-observance of regulations, also carries a criminal penalty, being punishable by two years' imprisonment and a fine (article 217);

(b) If involuntary homicide is the result of a traffic accident, the penalty may be increased to three years and the fine will be a heavy one. If the perpetrator was drunk or did not possess the necessary driving licence, the penalty could be increased to five years' imprisonment. These are aggravating circumstances which justify some degree of severity even when the homicide is involuntary;

(c) If the driver absconded after the accident which caused the homicide, the penalty will be still heavier, and may even be increased to 10 years' imprisonment (article 98 of the Highway Code);

(d) Certain circumstances may aggravate the penalty for homicide even if the element of intent is lacking, as in the case of blows struck or injury caused deliberately but without intention of causing death, yet which nevertheless do cause death; the penalty in this case is 20 years' imprisonment. If the blows are struck or the injuries caused with premeditation, the penalty will be life (new article 208 of the Penal Code);

(e) Individuals who have been involved in a brawl during which violence has been used resulting in death, are severely punished by the law and are liable on that account alone to two years' imprisonment, without prejudice to the penalties incurred by the person responsible for the violence.

82. Besides cases of wilful homicide, the death penalty is also incurred in a further four categories of serious offences constituting a particular danger for the national community.

(a) The first is extremely serious crimes committed by military personnel particularly in time of war, for which provision is made in the Code of Military Justice: treason, espionage, violation of fundamental duties of command, surrender or desertion in time of war, cowardice in the face of the enemy;

(b) Secondly, the death penalty is incurred for treason and espionage. Articles 60 and 60 bis of the Penal Code list cases of treason; treason is a crime committed by Tunisians in time of peace or in time of war. Article 60 ter concerns espionage, which is committed by aliens;

(c) The death penalty also applies to extremely serious attempts on the internal security of the State: an attempt on the life of the Head of State (article 63), with the purpose of changing the form of government or inciting the inhabitants to take up arms against each other or to cause disorder,

murder and pillage on Tunisian territory (article 72), the recruitment and arming of gangs of men or any person placing himself at the head of such gangs for the purpose of plundering State or private funds, or seizing or destroying movable or immovable property, or attacking or resisting the law enforcement services taking action against the perpetrators of such acts (article 74) and, lastly, the setting fire to or use of explosives to destroy buildings, ammunition stores or other State property (article 76);

(d) Lastly, the Penal Code as amended by Act No. 85-9 of 7 March 1985 provides for the application of the death penalty to all forms of violence committed through the use or threatened use of weapons, violence committed in court against a magistrate, crimes of rape committed with violence, use or threatened use of a weapon, and the crime of rape perpetrated, even without the use of these methods, on a person under 10 years of age. This severity is justified by the increase in recent years of acts of violence against magistrates by major criminals, jeopardizing the operation of justice, and also by the upsurge of sexual offences, which have reached an alarming level in recent years, and their threat to society.

83. The legislature is aware of the seriousness of the death penalty and has attached certain condition to it while restricting instances of its application. Moreover, practice shows that its use is frequent:

(a) Mention should first be made of article 80 of the Penal Code, which exempts from the penalties incurred by the perpetrators of attacks against the security of the State an offender who, before the planned act has been carried out and before the beginning of any proceedings, has been the first to inform the administrative or judicial authorities of the plots or attempts or has denounced their perpetrators or accomplices, or after the beginning of the proceedings has brought about their arrest;

(b) Article 43 (2) of the Penal Code provides that when the penalty incurred is the death penalty, it shall be replaced by a 10-year prison term in the case of delinquents over 13 and under 18 years of age;

(c) Article 38 of the same Code provides that the offence is not punishable when the offender is below the age of 13 or was of unsound mind at the time of the act;

(d) Article 53 of the Penal Code allows the court to reduce the penalty, when the circumstances of the act in respect of which proceedings have been taken so justify;

(e) Lastly, the President of the Republic may always exercise his right of pardon and commute capital punishment to a sentence of life imprisonment (article 371 of the Code of Penal Procedure).

84. The statistics on executions in the past few years are as follows: 1986, 14 executions; 1987 (up to October), 6 executions. Since 1988, 14 death sentences have been passed by the Tunisian courts but only 6 executions have been carried out; the President of the Republic exercises the right of

pardon more and more frequently. Some death sentences are executed only in the case of villainous crimes which strike the collective and popular consciousness.

85. In its concern to preserve human life against any attack, the legislature has scrupulously regulated by law the use of weapons by law enforcement officials, even in the case of riots or armed demonstrations.

86. Law No. 69-4 of 24 January 1969, regulating public meetings, processions, parades, demonstrations and assemblies, provides for cases in which law enforcement officials are empowered to use their weapons. An armed or unarmed assembly likely to disturb the public peace may be broken up by force after being ordered to disperse and given two warnings using sound or light signals (articles 15-19). Law enforcement officials may resort to the use of weapons only in cases of self-defence as provided for in the Penal Code, when they cannot otherwise defend places they are occupying, buildings they are protecting, or posts or persons they have been instructed to guard or if resistance cannot be overcome by any means other than use of weapons. The use of weapons by law enforcement officials is also a last resort when a suspect is repeatedly ordered to stop but does not obey and attempts to escape and when there is no means other than the use of weapons to compel him to stop. If law enforcement officials find themselves in the presence of demonstrators who refuse to disperse despite warnings, they may use their weapons only after first employing the following methods in turn: water-cannon or baton charges, tear gas, and shots in the air to frighten the demonstrators. If use of these methods produces no result, weapons may be employed progressively as follows: (1) by firing over the heads of the demonstrators; (2) by firing at their legs. Only in the event that the demonstrators endeavour to achieve their aim by force despite the use of all the above-mentioned methods, are law enforcement officials entitled to shoot at them directly (articles 21 and 22). Furthermore, it should be noted that law enforcement officials, whatever their rank, are trained in specialized colleges. These colleges give classes on legal matters and on rules governing the use of weapons. The Tunisian courts have sentenced law enforcement officials for using their weapons without clear need. Thus, 56 police officers were sentenced during the legal year 1991/1992 for abuse of authority and legally unmotivated infringement of the liberty of other persons. A further 14 police officers were sentenced in criminal cases.

87. Furthermore, and in order to guarantee the physical integrity of the human person, an Act on the removal and transplantation of human organs was adopted on 2 March 1991 (Journal Officiel No.22 of 29 March 1991). Article 1 of this Act states that "the physical integrity of the human person shall be guaranteed". The Act allows, within the context of medical care, the removal of an organ from one individual (the "donor") and its transplantation to another individual's body. Under the Act, such an operation may not be carried out except with the consent of the donor or his relatives, a list of whom is provided. The Act unconditionally prohibits the removal of human organs in return for money or reward in any other form. Violations of the provisions of this Act are punishable by two to five years' imprisonment and by a fine.

88. It should be noted that Tunisia is a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity adopted by the United Nations General Assembly in 1968. Tunisia is also a party to the International Convention for the Safety of Life at Sea, 1960. The United Nations Convention against Torture and other

Cruel, Inhuman or Degrading Treatment or Punishment, 1984, has also been ratified by Act No. 88-79 of 11 July 1988.

B. Article 7. Prohibition of torture and treatment harmful to the individual

89. Article 7 of the Covenant seeks to protect the individual from being subjected to any kind of violence, whether by a private individual or by a public official. The penalties laid down for such offences are decidedly severe, particularly when the victim is a minor or legally incapacitated or when the violence precedes, accompanies or follows an attack on individual freedom.

90. In a concern to protect the physical integrity of the individual, particularly against certain forms of dereliction of duty on the part of officialdom, Tunisian positive law prescribes severe penalties for such practices. Various cases are envisaged by the Penal Code:

(a) Article 101 stipulates a penalty of five years' imprisonment and a fine for any public official or similar person who, in the exercise of his functions, uses violence or causes it to be used against any person without just cause;

(b) The same penalty is incurred by a public official who unlawfully interferes with the personal liberty of others, or who perpetrates or causes to be perpetrated violence or ill-treatment against an accused person, witness or expert in order to extract a confession or statement from them (article 103);

(c) The threat of violence or ill-treatment by a public official is punishable by six months' imprisonment;

(d) A penalty of two years' imprisonment and a fine is incurred by a public official or similar person who, resorting to one of the practices mentioned in article 103, has employed prisoners on work other than that of public utility ordered by the Government (article 105). In addition, public officials found guilty of attacks on personal freedom, violence towards persons or torture may be debarred from exercising certain rights such as employment in the civil service, a career in certain professions, the right to vote, the right to carry weapons or all official honorary distinctions (article 115). The person's status as a public official thus has a bearing on the determination of the penalty when he has employed violence. This status is to some extent an aggravating factor from which the legislature draws inferences. These penalties are applied in cases of violence, torture or cruel treatment committed during an inquiry or investigation and in general when individuals are deprived of their freedom.

91. In November 1987, an act amended certain articles of the Code of Penal Procedure regarding police custody and pre-trial detention (Act No. 87-70 of 26 November 1987). The new provisions grant persons placed in the custody of judicial police officers the right to request a medical examination during or on the expiry of the period of custody. The officers concerned are required to mention any such request in the judicial record. The purpose of this provision

is to give persons held in police custody an opportunity to have any violence to which they may have been subjected during such custody placed on record and in that event to secure enforcement of the penalties provided for by the Penal Code, as described in the previous paragraph. This provision has a definite deterrent effect. The Code of Penal Procedure further provides in article 199 that all acts or decisions contrary to the provisions of law and order, the fundamental rules of procedure and the legitimate concern of defence are null and void. If, therefore, it transpires that violence has been committed against persons in police custody, the documents drawn up by judicial police officers after resorting to such methods shall be declared null and void, because they are contrary to the rules of procedure and the legitimate concern of defence.

92. During the period of emergency marked by the discovery of a fundamentalist plot and by a growing number of acts of violence by the Ennahdha movement, allegations of excesses committed by certain police forces upon certain detainees were brought to the knowledge of the President of the Republic. The President at once took the initiative of convening a number of national personalities active in the field of human rights, including, in particular, the Chairman of the Tunisian League for Human Rights and the Chairman of the Higher Committee of Human Rights and Fundamental Freedoms, as well as the President of the Arab Human Rights Institute, who was elected to the United Nations Committee against Torture in 1991. On 20 June 1991, the President of the Republic decided to set up an independent commission of inquiry to investigate allegations of ill-treatment. Ambassador Rachid Driss was appointed Chairman of this commission and entrusted with the selection of its members. On 19 October 1991 the President of the Republic ordered the publication of the conclusions and recommendations of the Driss Commission. The Driss report noted that some abuses had indeed been committed but that they had remained entirely isolated and in no way reflected the policy of the State. The President of the Republic ordered the departments concerned to take the necessary steps to implement the conclusions of the Driss Commission. In addition, he also addressed the following letter to Mr. Rachid Driss on 17 April 1992:

> "On 11 September 1991 you submitted to me a report on the work of the Commission of Inquiry with the chairmanship of which and with the selection of whose members I had entrusted you on 20 June 1991 following the spread of allegations on the subject of supposed breaches of human rights in our country.
>
> "The report in question included the conclusions reached by the said Commission as well as the recommendations formulated by it. I have been and still am concerned to safeguard the rights of all citizens and to protect them against all violations or abuses, of whatever magnitude or origin, while at the same time ensuring the non-recurrence of acts of this nature.
>
> "I have ordered the authorities concerned to take all necessary steps to ensure full implementation of the recommendations contained in the report, including the punishment of any person who may have broken the law and compensation for damages suffered by any victim. In doing so I have again stressed the need to instil greater awareness in persons responsible for applying the law and to strengthen the provisions and measures

guaranteeing the continuance of the democratic process in our country with the requisite measure of determination and honesty.

"I thank you again for the valuable work you have done through the Commission and, knowing the sincerity, rectitude and patriotism by which you have always distinguished yourself, I invite you to prepare a second report on the implementation of the recommendations contained in the first report and to forward it to me as soon as possible. I have already issued orders in the appropriate quarters to facilitate your task and to furnish you with whatever you may need in order to fulfil your mission to the best possible effect."

93. The Tunisian Government has itself taken the initiative of deploring certain excesses brought to its attention. It has discussed the matter openly with the delegations of several humanitarian organizations, including Amnesty International, which have visited Tunisia. The Tunisian Minister of Foreign Affairs had occasion to recall this in his statement at the forty-eighth session of the Commission on Human Rights at Geneva in February 1992, when he said that:

"Tunisia, which banned all forms of extremism, intolerance and despotism, also condemned excessive behaviour in applying the law. It had never hesitated to adopt the most severe disciplinary measures against certain members of the police force and to bring them to trial to answer for their acts. Judicial proceedings had thus been instituted against those who had broken the law, in particular following the report submitted by the Commission of Inquiry to the President of the Republic who had ordered its establishment and had enabled it to perform its task with complete independence."

94. After the verifications and inquiries ordered by the Head of State, it was established that certain abuses had indeed taken place. All such cases had occurred during the same period. Measures have been taken in conformity with the law in force to terminate the situations giving rise to abuses. Cases of excesses identified have completely stopped occurring, a fact which reveals their exceptional nature. In this connection it should be recalled that the Tunisian authorities have acted promptly to institute inquiries into cases of persons dying in detention. Criminal actions have been instituted by the Public Prosecutor's Office under articles 101, 102 and 103 of the Penal Code following complaints brought against certain law enforcement officials.

95. Over the past years more than 100 police officers have been brought before police and criminal courts for offences constituting an abuse of authority, and sentences varying from fines to terms of imprisonment have been handed down. Other cases are pending before the courts.

96. Disciplinary measures have also been taken in respect of several law enforcement officers. The Ministry of the Interior has referred several officials to the Council of Honour, and more than twenty of these officers have been dismissed on grounds of violence and abuse of authority.

97. As the Minister of the Interior stated at the opening of a seminar for senior officials of the Ministry held on 12 May 1992 on the topic of "The Police and Society": "Under Tunisia's policy in security matters, the police officer is regarded as the representative of authority and the reflection thereof ... Just as the police officer must display firmness in order to safeguard the prestige of the State and the primacy of law, so his conduct towards citizens must be founded upon respect of the individual and human rights."

98. Furthermore, measures of assistance of a social and humanitarian nature have been taken by the public authorities in respect of the victims or their families. These measures have consisted, in particular, in the granting of a capital sum and a substantial pension without prejudice to any compensation that might be decided upon by the courts at a later stage.

99. Preventive measures have been taken with a view to strengthening and safeguarding the protection of human rights. Among these measures, particular mention should be made of the following:

(a) The publication of a code of conduct for law enforcement officers, the preamble to which states that "it is the duty of all to propagate a sense of duty and awareness of responsibility in order to avert and prevent any practices contrary to the ideals of the new Tunisia, and especially those of democracy and human rights". Furthermore, the code of conduct incorporates the following basic texts: the Declaration of 7 November 1987; the Tunisian Constitution; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Code of Criminal Procedure, section V: "On pre-trial detention"; the decree providing special regulations for prisons; and the minimum rules for the treatment of detainees.

(b) The incorporation of instruction in human rights in training programmes for law enforcement officers and the holding of lecture series for officers already exercising their duties with a view to sensitizing them to problems relating to domestic and international standards for the protection of human rights.

(c) The establishment on 7 January 1991 of the Higher Committee of Human Rights and Fundamental Freedoms entrusted, inter alia, by special mandate of the President of the Republic, with visiting prisons and inquiring into the conditions of detention of detainees and with reporting thereon to the Head of State.

(d) The establishment within the Ministry of the Interior of a special human rights unit responsible, inter alia, for answering complaints from citizens on matters pertaining to human rights, keeping individual records in connection with situations liable to give rise to allegations of abuses, and inquiring into and answering complaints addressed to the Ministry by citizens.

100. The Penal Code also provides for the punishment of violence other than in the cases quoted above, for example in the kidnapping, abduction or restraint of individuals, intentional violence, threats of violence and involuntary violence.

(a) Violence in cases of kidnapping or abduction: new Article 237, amended in 1977, provides that if a physical disability or illness results from this crime, its perpetrator is punishable with imprisonment for life. The same is true in cases of arbitrary arrest, detention or restraint which result in physical disability or illness (new article 250). The penalty is 10 to 20 years' imprisonment when the illness or physical disability is the result of the hijacking of a means of land, air or sea transport (new article 306 bis);

(b) Intentional violence: the Penal Code makes the following distinction, by order of gravity:

- Assaults or acts of violence which have no serious or lasting effects on the health of the victim; the perpetrators of such violent acts are liable to 15 days' imprisonment and a fine (article 319);

- Violent acts which have serious consequences for the health of the victims.

In the case of wounds, blows or any other act of violence, the penalty is one year's imprisonment and a fine. If there is premeditation, the penalty is three years' imprisonment. If the acts of violence result in mutilation, loss of the use of a limb, disfigurement, infirmity or permanent disability not exceeding 20 per cent, the penalty shall be five years' imprisonment. If the disability exceeds 20 per cent, the penalty shall be five years' hard labour (new article 219). In addition, the mere fact of participating in a fight resulting in serious consequences for the victim is punishable by six months' imprisonment (article 220);

(c) Threats of violence: any person who, by any means whatsoever, threatens another with an outrage which would carry a criminal penalty, is liable to six months' to five years' imprisonment and a fine. This penalty is doubled if the threats are accompanied by orders or by conditions, even if made verbally (article 222, amended in 1977). A person who threatens another with a weapon even without intending to use it, is liable to one year's imprisonment and a fine (article 223);

(d) Involuntary violence: in the case of involuntary violence, the perpetrator is still punished, but less severely (one year's imprisonment and a fine) (article 225).

101. The Penal Code provides for heavier penalties when the victims are minors or legally incapacitated persons. An additional cause of aggravation of the penalty is the fact that the offender is a parent or grandparent of the victim or a person having authority over him (article 224). In addition, the abandonment of a minor or legally incapacitated person which causes him injury is punishable by severe penalties (article 212 bis introduced in 1971, and new article 213).

102. In accordance with article 7 of the Covenant, Tunisian law protects the physical integrity of individuals in medical or scientific experiments. Decree No. 73-496 of 20 October 1973 containing the Code of Medical Ethics lays down in title IV rules on experimentation and research on human beings. The Code distinguishes between therapeutic and non-therapeutic experimentation. In the former case, a doctor may only resort to a new therapeutic method if he considers that it holds out real hope of saving the life, restoring the health or relieving the suffering of the sick person. The doctor must, as far as possible, bearing in mind the patient's psychology, obtain the latter's free and lucid consent, and in the event of his legal incapacity, the consent of his legal representative (article 61). In the case of non-therapeutic experimentation, experiments on a human being must be purely scientific and can only take place with the free and lucid consent of the subject, who must be of a physical, mental and legal condition enabling him fully to exercise his right of choice. Consent must be expressed in writing. The responsibility for such an experiment always lies with the experimenter. The subject is free to suspend the experiment at any time. In carrying out the experiment, the doctor's duty continues to be that of protecting the life and health of the subject of the experiment (articles 63-69). In its concern to protect all individuals against any attack on their physical integrity, the legislature requires the consent of the blood donor even when the blood is for a transfusion: Act No. 82-26 of 17 March 1982, concerning the organization of the taking of human blood for transfusion, provides in article 2 that human blood can only be taken with the free and conscious consent of the person concerned and without any quid pro quo. Any infringement of this provision is punished by 3 to 12 months' imprisonment and/or a fine.

C. Article 8. Prohibition of slavery, servitude and forced labour

103. Under article 8 of the Covenant, slavery and the slave trade as well as forced or compulsory labour are prohibited. In Tunisia the abolition of slavery goes back to the nineteenth century: a decree of 23 January 1846 provided for the manumission of slaves and another decree of 28 May 1890 prescribed criminal penalties for all those convicted of trading in slaves. Independent Tunisia, proclaiming its attachment to "human dignity, justice and freedom" (preamble to the Constitution) and guaranteeing the inviolability of the human person, acceded in 1966 to the Slavery Convention (25 September 1926), as amended by the Protocol of 7 December 1953 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (7 September 1956). Tunisia's accession to these instruments has only confirmed that slavery has disappeared.

104. As regards forced or compulsory labour, only persons sentenced to such labour as a result of a lawful order of court were obliged to perform it. However, in January 1989, the Government submitted a bill to amend the Penal Code, the Code of Penal Procedure and the Code of Military Justice. These amendments concerned the abolition of the penalty of forced labour and all other similar penalties and the replacement of these by penalties of imprisonment. After its adoption, the bill was promulgated and published in the Official Journal of the Tunisian Republic (Act No. 89-23 of 27 February 1989). In the prisons, the authorization conferred by Decree No. 60-85 of 16 November 1960 allowed the prison administration to put convicted detainees to work has been withdrawn. Decree No. 88-1876 of 4 November 1988 regarding the special regulations of the prisons which repeals the above Decree of 1960 has conceived work by convicted detainees as a right which they may exercise

(article 14-5). The deprivation of work is incidentally one of the sanctions provided in the case of transgressions to prison regulations (article 16-4).

105. Besides this, the legislature instituted civilian labour by Act No. 78-22 of 8 March 1978. Although this may bear a resemblance to compulsory labour, national requirements made it recommendable so as to ensure the participation of all Tunisians in the country's development effort and to contribute to training all young people with a view to their integration into the economy. Article 1 of the Act provides that civilian service is instituted with a view to ensuring the participation of young people in the national economic and social development effort and promoting their vocational training. The civilian service thus contributes to the implementation of economic and social projects, both nationally and regionally, as well as rural development projects. The civilian service was instituted as part of the rural development policy as a means of fighting unemployment and preventing delinquency. It is for "all Tunisians over 18 and under 30 years of age who cannot prove that they are employed or enroled in a public educational or training establishment or in an approved private establishment" (article 2). Their assignment is decided by a commission, presided over by a magistrate, for a period of one year which can be extended by a decision of the commission accompanied by a statement of reasons. In addition, after a period of three months, the commission may reconsider its decision if the young person assigned submits a written petition with proof of acceptable employment. It should be noted that work in the civilian service differs from forced labour in that the person performing it receives remuneration for his work which cannot be less than the guaranteed minimum wage. In actual fact, more than 90 per cent of the persons working within the context of the civilian service are voluntary workers. In practice, the law on civilian labour has as good as fallen into disuse.

106. In accordance with the relevant provisions of article 8 of the Covenant, and in the light of article 15 of the Constitution, which provides that the defence of Tunisia and its territorial integrity is a sacred duty for every citizen, the law requires every Tunisian citizen of 20 years of age to perform military service, except in medically confirmed cases of physical disability. Exemption from military obligations may be granted in cases determined by law. The men called up for military service, the duration of which is set at one year, are assigned to either military service or national service; the latter receive three months' basic military training, after which they are individually or collectively assigned to development units organized along military lines for participation in projects forming part of the national development plan, particularly in rural areas or priority development areas (Act No. 67-19 of 31 May 1967 on military service and Act No. 75-8 of 19 February 1975 establishing national service).

D. Article 9. Liberty and security of person

107. Article 9 of the Covenant prohibits any arbitrary arrest or detention. It guarantees the right of all individuals to liberty and security. Arrest and detention of individuals for a criminal offence is governed mainly by the Code of Penal Procedure.

108. A limited number of judicial police officers are authorized, as part of their functions, to take any measures necessary in conducting inquiry proceedings. They may provisionally arrest accused persons who must be brought

before the nearest court without delay (article 12). Article 12 of the Code of Penal Procedure has been interpreted in case law and in practice in a way which enables judicial police officers to conduct inquiries within a reasonable period.

109. Act No. 87-70 amending certain articles of the Code of Penal Procedure regarding custody and pre-trial detention has done away with all interpretation of article 12 by setting the period of custody to four days, renewable once through a written authorization of the Public Prosecutor; in cases of absolute necessity, another prolongation of two days only may be authorized by the Public Prosecutor.

110. This law also determines the procedure which must be followed by the judicial police officers in preparing reports. The procedure is designed to guarantee the rights of the person held in custody and prevent any abuse of his person. For example, the judicial police officer is required to indicate in the report, the date, day and time when the period of custody began and ended. He is also obligated to indicate the duration of all interrogations. In addition, as already stated in the comments in connection with article 7, the bill states that, during or on the expiry of the period of custody, the person detained may request a medical examination.

111. All these obligations are applicable when an examining magistrate commissions the judicial police by rogatory letters, where necessary, and the police come to hold an individual in custody. Any extension is then at the discretion of the examining magistrate.

112. Where the examining magistrate issues an arrest warrant, and that warrant is acted upon, he must interrogate the accused within not more than three days following his arrival at the place of detention. At the end of that period, the accused must be taken by the chief warder before the Public Prosecutor, who shall require the examining magistrate to conduct his interrogation immediately. If the examining magistrate refuses or is unable to comply, the interrogation is conducted by the president of the court or by a magistrate designated by him, failing which the Public Prosecutor shall order the immediate release of the accused (article 79). Similar provisions are contained in the bill for application in the event that the court itself issues a warrant for the arrest of an accused who has absconded (new article 142).

113. When presented with the application for investigation, the examining magistrate, must, upon the first appearance of the accused, "acquaint him with the charges against him and the legislation applicable, after informing him of his right not to reply except in the presence of a lawyer of his choice" (article 69).

114. The practice followed by the Tunisian courts is to accord priority to trying accused persons in detention. However, the time needed to carry out all the investigations required by law for the purposes of the inquiry varies. Moreover, in the interest of public order safety and justice, it is necessary for some defendants to be detained pending trial. Accordingly, the Code of Penal Procedure authorizes detention pending trial, although only as an exceptional measure (article 84). The accused may be placed in pre-trial detention in cases of gross crimes or offences and whenever, because of the

existence of grave presumptions, detention appears called for as a security measure to prevent further offences to ensure execution of the sentence or to guarantee the authenticity of the information provided. However, even in these cases, the legislation of November 1987 provides a period of detention of six months which may be extended by the examining magistrate, upon application by the Public Prosecutor and by reasoned order, only once in the case of an offence and twice in the case of a crime. A draft act aimed at reducing these time limits still further has been prepared. It provides that the duration of pre-trial detention shall be six months, renewable only once for three months in the case of an offence and twice for four months in the case of a crime.

115. The extension order is open to appeal before the Indictment Division. Nevertheless, in the case of some minor offences, the accused may be released five days after interrogation (new article 85). Under the Code of Penal Procedure, the examining magistrate ordering the detention may order the provisional release of the accused, either on his own authority, or at the request of the party concerned, or upon application by the Public Prosecutor. However, in order to protect the accused further against any abuse, the above act provides new provisions stipulating the maximum periods of pre-trial detention for crimes and offences and affording the detainee more effective remedies. It provides, among other things, that a decision must be made on the application for provisional release within four days of its submission, that the accused shall be allowed four days to appeal against the ruling of any examining magistrate rejecting this application, and that the committal chamber must rule on the appeal within a period of not more than eight days from the transmittal of the case file (new articles 86 and 87). The new draft Code of Penal Procedure provides that if the examining magistrate fails to take a decision on the application for provisional release within a period of four days, the accused, his lawyer or the Public Prosecutor may apply directly to the Committee Chamber (indictment division), which must take a decision within eight days.

116. However, the proposed reform introduces a major innovation, namely that provisional release now takes place five days after the interrogation of an accused not previously sentenced to a penalty when the maximum penalty provided under the law does not exceed one year.

117. In the event of any violation of the rules constituting an infringement of individual freedom, the criminal responsibility of the author may be incurred on the basis of article 103 of the Penal Code (see paragraph 90 (b), above). Under article 85 of the Code of Obligations and Contracts, the victim of unlawful arrest or detention has the right to demand compensation from the official responsible.

118. In 1977, the legislature amended a number of articles of the Penal Code to provide for more severe penalties for infringements of individual liberty. While it is not possible here to discuss in detail all the provisions amended, the following are points worth noting:

(a) Article 250 (new) of the Penal Code provides that "anyone who, without sanction of the law, arrests, detains or restrains a person shall be liable to 5 to 10 years' imprisonment";

(b) Article 251 (new) further provides that the penalty shall be imprisonment for life if the arrest, detention or restraint lasts more than a month. If the arrest, detention or unlawful restraint does not last more than five days, the penalty is reduced to two to five years (new article 252);

(c) Article 237 (new) provides for a penalty of 10 years' imprisonment for persons guilty of kidnapping or abduction with deceit, violence or threats. If the crime is committed with the use of weapons, or a false uniform, or under a false identity or under a falsified order of the public authorities, the penalty shall be increased to life imprisonment;

(d) An article 306 bis has been inserted to provide for a penalty of 5 to 10 years' hard labour for any person who, by violence or threat, seizes or exercises control over a means of land, sea or air transport.

E. Article 10. System of detention

119. Under article 10 of the Covenant, persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The conditions of their detention must, in particular, be appropriate to their age.

120. After November 1987, the Tunisian legislator gave special importance to the conditions of detention in prisons; the principle according to which no one may be deprived of his/her liberty except upon execution of a sentence, or by virtue of an arrest warrant was taken up by Decree No. 88-1876 of 14 November 1988 regarding special prison regulations (article 3). This Decree introduced new provisions tending to change the prisons from a place of detention, the only aim of which is to deprive the detainees of their freedom, into establishments of re-education and rehabilitation with a view to the re-insertion of detainees in society (article 1).

121. Starting from this principle, the prisons were classified into three categories, depending on the gravity of the sentence; main prisons, regional prisons and semi-open prisons.

(a) The main prisons take in detainees sentenced to 5 years' imprisonment or more;

(b) The regional prisons take in detainees sentenced to less than 5 years' imprisonment and those in pre-trial detention;

(c) The semi-open prisons take in those sentenced to re-educational work and those sentenced to imprisonment for offences or fines (article 2 of Decree above).

122. Inside the prisons, the detainees are classified according to their age, sex and penal status: sentenced, in pre-trial detention, first offender, or recidivist (article 7 of Decree above).

123. Female detainees are normally taken in by special prisons. If this is not the case, some pavilions are exclusively allocated to them. In both cases, they are taken in charge by female wardens under the authority of the director of the prison (article 8 of above Decree). The children of female detainees may be kept up to the age of three. This period may be extended upon request of the mother and with the authorization of the director of the prison (article 9).

124. Moreover, the above Decree guarantees to detainees the right to an individual bed. The régime is collective by day and by night. The detainee may only be isolated if the needs of the judicial inquiry or if the security of the detainee him/herself require it. In all cases, two detainees only may not be isolated in one same place. The individual cell must include basic and sanitary commodities (article 10). Article 14 of the Decree lists the detainee's rights. Among these rights, the following may be mentioned: the right to medical care in the hospital or prison infirmary; the right to hygiene and cleanliness; the right to receive visitors; the right to confer with legal advisers in secluded premises, without the presence of prison employees for those in pre-trial detention and those whose sentence is not final; the right to work depending on the nature of the work and of the detainee's specialization in return for wages fixed according to the available means and in conformity with the legal hourly schedule; the right to daily exercise of at least one hour.

125. Discipline inside the prisons is favoured by the above Decree (article 16). By virtue of this article, punishments are pronounced by the disciplinary council which includes one member representing the detainees and a social worker. The disciplinary council pronounces the penalty and sets its duration. The penalties may range from deprivation of the reception of the basket or of packets for a period of not more than 15 days to isolation for a period of not more than 10 days.

126. Another document, the decree of 13 March 1957, provided for the setting up of regional commissions for the supervision of penitentiary establishments. These commissions are responsible for studying all questions relating to cleanliness, hygiene, safety, nutrition, health services, working arrangements and conditions, observation of regulations, discipline, vocational training and the moral reform of the prisoners.

127. Administrative practice does everything possible to ensure the reform and social rehabilitation of delinquents through the practical organization of life in prisons and observation centres.

128. In the case of minors, it should be noted that, under article 38 of the Penal Code, offences are not punishable when the accused is less than 13 years of age at the time of the act. In addition, the Code of Penal Procedure provides for a special régime in the case of minors. During the examination, the examining magistrate and the juvenile magistrate may place a minor of less than 18 years of age in the care of its parents or guardian, a hostel or approved public or private institution, a child-care service, a hospital establishment, or a State education or vocational training establishment (article 237). Minors of more than 13 years of age may not be the examining magistrate or by the committal chamber, except where such a measure is deemed unavoidable, or where it is impossible to make any other arrangement. In the latter case, the minor is kept in special quarters. As far as possible, he

is isolated at night (article 238). If a minor of more than 13 years of age is given a penal sentence, the sentence is served in a special type of establishment.

129. Finally, detainees may have their sentences remitted by presidential pardon. It should be noted, regarding this matter that, from 7 November 1987 to 8 December 1988, twenty such decrees have been taken and that 8,449 detainees benefited from these. In addition, the Minister of the Interior may, on the recommendation of a special commission, release prisoners on probation in cases where their behaviour in detention indicates that they have seen the error of their ways. The release order may require the probationer to be subject to supervision and/or to work in a public service or private institution.

F. Article 11. Prohibition of imprisonment for inability to fulfil a contractual obligation

130. Article 11 of the Covenant states that no one shall be imprisoned on the ground of inability to fulfil a contractual obligation. Tunisian legislation provides for no penalty of imprisonment for persons unable to fulfil contractual obligations. The Code of Civil and Commercial Procedure provides only for distraint on the property of the debtor.

G. Article 12. Liberty of movement and freedom of residence

131. Article 12 of the covenant provides for liberty of movement and freedom to choose one's residence. The rights established in the article are embodied in the Tunisian Constitution, article 10 of which provides that "Every citizen has the right to move freely within the country, to leave the country, and to choose his domicile within the limits of the law", and article 11 of which provides further that "No citizen may be expelled from or prevented from returning to his homeland".

132. Immediately after the changes of 7 November, and with the aim of achieving reconciliation among all Tunisians, the President of the Republic invited all Tunisians who had expatriated themselves for political reasons to return home. A number of them have returned to Tunisia. Those among them against whom proceedings were pending have regularized their situation. The general amnesty proclaimed on 3 July 1989 affected several among them. Some, however, have preferred to remain abroad despite the opportunity offered them to return to their country and to regularize their position vis-à-vis the judiciary.

133. The rights set forth in article 10 referred to above are spelled out and regulated by Tunisian law. A distinction is drawn between movement within the country and the act of leaving the national territory.

134. Freedom to come and go within the country is not subject to any formalities. The only restrictions derive from the requirements of penal action (detention, administrative supervision). In addition, the Highway Code governs the use of public thoroughfares. However, the implementation of the exceptional measures provided for in article 46 of the Constitution may limit freedom of movement as, in fact, is provided for in article 4 of the Covenant. The

circumstances in which article 46 of the Constitution may be applied were described in the comments on article 4 of the Covenant. The decree of 26 January 1978 regulating the state of emergency empowers governors to prohibit the movement of persons or vehicles; to regulate the length of time spent in the country by individuals, to prohibit any person intending to impede the action of the public authorities in any way whatsoever from remaining in the country and to co-opt persons essential for the proper functioning of public services and activities of vital national importance.

135. Freedom to leave and return to the national territory is governed by Act No. 75-40 of 14 May 1975 relating to passports and travel documents. Article 34 of the Act provides that, in order to leave Tunisian territory, travellers are required to pass through the border posts set up expressly for that purpose. Under article 1, any Tunisian national wishing to travel abroad must be in possession of a national travel document. Travel documents are of two sorts - passports and travel authorizations (article 3). Every Tunisian national has the right to be issued with a passport, and to have it renewed or extended, subject to the restrictions laid down by the Act (criminal prosecution, a minor or other legally disqualified person unable to produce an authorization from his legal representative, barring a judicial decision, reasons of public order and safety; or in the interest of the good reputation of Tunisia). The criteria applied by the administrative authority in order to determine whether the good reputation of Tunisia has been harmed are: a Tunisian national's participation in a terrorist act, membership in a group of mercenaries, or a legal conviction for drug trafficking or illegal arms trafficking. This provision placing restrictions on the issuance or renewal of a passport is not in our view inconsistent with the provisions of article 12, paragraph 3, of the International Covenant on Civil and Political Rights. It can be regarded as a measure of protection, guaranteeing and respect of rights. Moreover, a decision by the Minister of the Interior to refuse to issue a passport may be appealed against as an action ultra vires to the Administrative Tribunal.

136. The status of aliens is governed by Act No. 68-2 of 8 March 1968. However, aliens legally established in Tunisia enjoy unlimited freedom of movement subject to measures taken under the Act in connection with expulsion. The Act allows Tunisian travel documents to be issued to aliens. The travel documents which may be issued to non-nationals are laissez-passer of categories B, C or D. Laissez-passer category B are issued to aliens who wish to leave Tunisian category but are not in possession of travel documents issued by the authorities of their respective countries.

137. A laissez-passer of category C is issued to aliens enjoying refugee status in Tunisia under the Geneva Convention relating to the Status of Refugees, which came into force on 22 April 1954 and was ratified by Tunisia on 9 May 1969 (Act No. 27-1969). This document is valid for one to two years. Its validity can only be renewed or extended for refugees residing in Tunisia in a regular manner.

138. A laissez-passer of category D can be issued to an alien having the status of a stateless person in accordance with conventions in force and, in particular, with the Convention relating to the Status of Stateless Persons which entered into force on 6 June 1960 and was ratified by Tunisia in June 1955 (Decree of 2 June 1955). In the case of an application for issuance or renewal of a travel document of category B or C, the competent authorities may refuse to

issue or extend the validity of such a document if they consider that the applicant's movements constitute a threat to law and order. An appeal against the decisions of these authorities as actions ultra vires can be lodged with the Administrative Tribunal.

H. Article 13. Expulsion of aliens

139. Under the provisions of article 13 of the Covenant, an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with the law. Article 18 of Act No. 68-7 of 8 March 1968 concerning the status of aliens in Tunisia provides that the Minister of the Interior may issue an expulsion order against any alien whose presence in Tunisian territory constitutes a threat to public order. However, article 19 of the same Act provides that, in the case of an alien who is the subject of an expulsion order but who is unable to leave Tunisia, the Minister of the Interior shall determine the place where he shall reside until such time as he is able to leave the country. As an order of the Minister of the Interior expelling an alien is an administrative act, it may be appealed against on the grounds of abuse of authority before the Administrative Tribunal, which, in turn, may decide to suspend the execution of the order until it has been able to consider the substance of the appeal. It should be pointed out that the Minister of the Interior alone has the power to sign the expulsion order. He cannot delegate that power without infringing the law.

I. Article 14. Safeguards for the administration of justice

140. Article 14 of the Covenant provides for a set of safeguards for the administration of justice. It lists a number of rules which must be observed in order to preserve the civil rights of all the persons to whom the law applies and to guarantee individual freedoms. In the following comments, we shall endeavour to examine one after the other the obligations imposed upon the State by the article, to the extent that the balance of the report allows. Nevertheless, it is not intended that these comments should describe the Tunisian court system in all its details. For the convenience of the report, we shall limit ourselves to aspects which are directly connected with the provisions of article 14 of the Covenant. We shall thus examine each of the following points: non-discrimination among the subjects of the law, the impartiality and independence of the judiciary, the dual system of ordinary and administrative courts, the remedies at law, the competence of the Administrative Tribunal, the public nature of hearings, the enforcement of court decisions, the safeguards for the accused, the special régime applicable to minors, the two-tiered jurisdiction as a safeguard for the subjects of the law, the redress of miscarriages of justice and res judicata. We shall also discuss the two trials of persons belonging to the fundamentalist movement known as "Ennahdha" which were held before the Tunis military court in July 1992.

141. Tunisian positive law does not discriminate in any way among the subjects of the law. The rules for the competence of courts are defined on the basis of competence ratione materiae and competence ratione loci. The rules for competence ratione materiae apportion disputes at law according to their kind, whereas competence ratione loci apportions jurisdiction according to district. The two sets of rules are complementary. Justice being a public service, it is accessible to all without any distinction. When a court declares itself

competent to decide a dispute that is submitted to it, it is subject only to the law. Incidentally, equality before the courts is strengthened by the legal aid given to poor persons.

142. The impartiality and independence of the judiciary are embodied in the Constitution and the legislation on the administration of justice. The organization of the judiciary in Tunisia is based on the principle of the separation of powers. Chapter V of the Constitution is entitled "The Judicial Power". Article 65 provides that "Judges shall be independent. They shall be subject to no higher authority in their judgement, but that of the law". An organic law - Act No. 67-29 of 14 July 1967 - determines the status of judges. Article 16 of this Act, in order to guarantee their independence, provides that "The exercise of the office of a judge is incompatible with the exercise of any public office and any other occupational or salaried activity". Article 17 of the same Act states that "the exercise of the office of a judge is incompatible with any elected office". Outside their duties, judges cannot be summoned for any public service other than military service (article 20). This same organic law determines the composition and the powers of the Higher Council of the Judiciary which is responsible for ensuring that the guarantees given to judges regarding their appointment, their promotion, their transfer and their discipline are safeguarded. There is also a draft law in the process of preparation which is intended to increase the number of elected members of this Council. The members of the judiciary enjoy jurisdictional protection and article 22 forbids any arrest or prosecution of a judge for a crime or offence without the prior authorization of the Higher Council of the Judiciary. Article 23 states that judges must render justice impartially, irrespective of persons or interests. They must not reach a decision on the basis of any personal knowledge they may have of the case. In addition to these guarantees established to ensure independent and impartial justice, it is legally possible for subjects of the law to present a petition to challenge a judge for reasons which give rise to fears that his impartiality might be in doubt. Cases where such a challenge may be made are provided for by the Code of Civil and Commercial Procedure (article 248 et seq.). Challenging a judge in penal matters is also provided (article 296 of the Code of Penal Procedure). Moreover, in order to guarantee effective justice and remedy cases in which there has been a procedural error or a miscarriage of justice, the Tunisian legal system has opted for the principle of two-tiered jurisdiction.

143. In their concern to preserve and strengthen the freedom and independence of lawyers, our lawmakers have provided in article 1 of Act No. 89-87 of 7 September 1989 relating to the organization of the legal profession: "The legal profession is a liberal and independent profession whose aim is to assist the institution of justice". The lawmakers' unshakable resolve to safeguard this independence is further evidenced by the repeal of the old status which relegated the lawyer to the subordinate position of a mere auxiliary of justice.

144. The independence of the legal profession expresses itself essentially through the system of self-management of the profession's affairs and through guarantees offered to the lawyer in the exercise of his profession. The management of the profession's affairs is entrusted to two bodies elected by the lawyers themselves and composed exclusively of lawyers. These bodies are the Council of the National Order of Lawyers, which operates at national level, and of branch councils which deal with regional matters. Article 62 of Act No. 89-87 of 7 September 1989 lists the duties of the Council of the Order of Lawyers as follows:

- deciding upon applications for admission to the register of lawyers; drawing up the register of lawyers; exercising disciplinary power and the power to exempt from punishment provided under articles 69 ff. of the Act; managing the lawyers' provident and retirement fund and providing lawyers and their families with health insurance and social welfare; superannuation; determining the amounts of pensions due to widows and minor children of deceased lawyers; granting honoraria to retired lawyers; considering the possibility of joining international and regional lawyers' associations or of withdrawing therefrom; participating in their congresses on behalf of Tunisian lawyers, and concluding agreements with them; organizing training lectures, the number of which may not be less than 20 a year. These lectures must be directed by the President of the Bar or his deputy appointed for the purpose; managing the property of the Order and authorizing the conclusion of contracts of all kinds, as well as transactions including those involving cession of rights.

- Branch councils deal with regional matters within the limits of their respective competences, and in particular with: suspending members from the exercise of their profession and authorizing them to resume such exercise; and managing priorities, as well as the credits assigned thereto, under the supervision of the National Order of Lawyers.

- The duties of the President of the Bar include the following: representing the National Order of Lawyers with all central authorities; supervising reelections to regional branch councils and any elections to fill posts falling vacant; chairing the Council of the Order of Lawyers; chairing the finance committee; concluding contracts authorized by the National Order of Lawyers.

- As for the chairmen of regional branch councils, they are empowered to: represent the branch with regional and local authorities; chair the branch council; consider complaints brought against lawyers; in the event of a dispute, assess lawyers' fees; supervise the liquidation of law offices upon closure; and assign or appoint lawyers.

The above structures, each within the limits of its competence, ensure the preservation of the principles of rectitude, moderation and respect of the profession's duties upon which the legal profession and its honour and interests are founded.

145. Guarantees are offered to lawyers in the exercise of their duties. In principle, and like all citizens, a lawyer suspected of having committed an offence or a crime can be interrogated by officers of the judiciary police, either within the framework of a preliminary inquiry or within that of a pre-trial investigation, and in the latter case the violation is brought to the notice of the judiciary police by a letter of request signed by the examining magistrate. As an exception to this principle, and desiring to grant guarantees to the suspected lawyer, the Tunisian lawmakers have, by the Act of 1989, stipulated that in cases where the offence of which the lawyer is suspected is directly related to the exercise of his profession, the suspected lawyer must be

referred to the examining magistrate by the Office of the Public Prosecutor. Article 45, paragraph 1 of the Act provides: "A lawyer exercising his profession who is accused of having committed an offence or a crime during or on the occasion of exercising his duties must be referred by the Public Prosecutor before the examining magistrate, who must proceed to interrogate him, personally or through one of his colleagues". The object of this provision is to avoid the lawyer's being interrogated by the judiciary police, which could constitute a form of humiliation. The examining magistrate conducting the interrogation will always have a certain respect for the lawyer, even if suspected, because of the object of a lawyer's activities which is the institution of justice. The rule is generally applicable and cannot be sidestepped under any pretext whatever, even in the case of flagrancy. Article 45, paragraph 4 of the Act of 1989 provides: "In a case of flagrante delicto the officers of the judiciary police shall institute all procedures which the case calls for, including search of the premises. The interrogation of the lawyer, however, shall remain within the exclusive competence of the magistrate in charge of the case."

146. A lawyer's office can only be searched in the presence of the legally competent magistrate and on condition that the chairman of the competent branch council or one of the members of that council has been notified and permitted to be present. The same provisions apply to offices of the National Order of Lawyers and its branches (article 45, paragraphs 2 and 3). The chairman of the competent regional branch must be informed of the accusation brought against the lawyer. He may be present at the interrogation personally or through a person appointed by him (article 45, last paragraph). Furthermore, paragraph 1 of article 46 of the 1989 Act provides: " Except in cases of established bad faith, pleadings and submissions presented before the courts cannot give rise to an action for offence, defamation, insult or calumny within the meaning of the Press Code and the Penal Code". This provision is bound to contribute effectively towards establishing more firmly the role of the defence in a trial. The defence cannot acquit itself of its task unless it enjoys the necessary guarantees for so doing. The lawyer is an essential element in the institution of justice.

147. The legal system laid down by the Constitution is based on the rule of a dual system of ordinary courts and administrative courts. This rule stems from the theory of the separation of powers, the Executive being independent of the Judiciary. The Administration cannot, therefore, be subjected to the ordinary courts. Article 69 of the Constitution has thus provided for the creation of a Council of State with two organs one of which, the Administrative Tribunal, can judge the Administration.

148. Article 2 of the Administrative Tribunal Act of 1 June 1972 provides that the Tribunal has jurisdiction "to deal with litigation involving the Administration". The article adds, however, that the civil courts shall remain competent, at first instance, to hear a claim against the Administration for compensation. The Administrative Tribunal is thus competent to rule as a court of first and last resort on appeals for annulment on grounds of misuse of authority lodged against all acts by the administrative authorities, whether central or regional, local public authorities (communes) or public bodies of an administrative type (article 3). It is also competent to hear a claim for Appeal on grounds of misuse of authority is designed to ensure the observance of legality by the executive authorities in accordance with the law, the regulations in force and general legal principles. The status of the judges of the Administrative Tribunal is similar to that of the judges of the ordinary courts as regards independence and impartiality.

149. In civil matters, the rules of competence ratione materiae provide for a very wide range of jurisdiction by the courts so that "everyone is entitled to have his case heard". The Code of Civil and Commercial Procedure offers an assortment of cases in which the courts are able to establish their competence. Article 2 of the Code recognizes the competence of the ordinary courts in all civil and commercial disputes between persons resident in Tunisia, whatever their nationality. If there is any element of attachment to Tunisian territory, these courts can establish their competence. We may mention, for instance, the case of an action against a foreigner living outside Tunisian territory when it concerns an accident which occurred in Tunisia or a contract that was concluded and performed, or should have been performed, in Tunisia. They are also competent to hear actions against Tunisians living abroad. The competence of the Tunisian courts can also be established when a foreigner agrees to be judged by them, even in the absence of any element of attachment justifying the competence of the Tunisian courts. The Tunisian courts may declare judgements that have been given in foreign countries to be enforceable. The Code of Civil and Commercial Procedure authorizes any person who has not been summoned to appear before a court, to express his opposition to a judgement by which he suffers a prejudice (article 168). What is more, it permits any third party having an interest in the case to intervene whatever the circumstances.

150. In a criminal affair, if the Public Prosecutor responsible for the prosecution decides to close the case, the injured party may himself prosecute on his own responsibility.

151. The competence of the Administrative Tribunal also allows an ordinary citizen to appeal for annulment, on grounds of misuse of authority, of actions by the various administrative authorities listed in article 3 of the Act of 1 June 1972, namely, actions by the central and regional administrations, local public authorities and public bodies of an administrative type. The Administrative Tribunal has, by means of its case law, widened its competence in the interests of the individual citizen. Thus the administrative judge has not limited himself to the organic concept of an administrative action as may be derived from the aforesaid article 3; he has opted for a material approach to the administrative action and, if an organ acts as a public authority, its actions can be impugned before the Administrative Tribunal. The administrative judge is not competent to deal with appeals against administrative contracts but he has declared himself competent to consider appeals for annulment of actions detachable from the contract, which often have the characteristics of a unilateral administrative action. Lastly, the Act of 1 June 1972 forbids appeals for the annulment of enactment decrees issued by the President of the Republic. However, the administrative judge has annulled individual actions taken on the basis of enactment decrees by means of the technique of a plea of illegality. The developments that have been mentioned show that positive law enables everybody to make good his rights through the multiplication of opportunities to appeal.

152. The public nature of hearings is a useful safeguard for impartiality and transparency. Consequently, the Code of Civil and Commercial Procedure (article 117) and the Code of Penal Procedure (article 143) have established the rule that hearings are to be held in public. This rule is subject to some exceptions which are the same as those provided for in article 14 of the Covenant. Article 117 of the Code of Civil Procedure authorizes the judge to hear a case in camera, at the request of the Public Prosecutor's Office or of one of the parties, in order to protect public order, morality or the confidentiality of family matters. The Code of Penal Procedure provides for

two exceptions: the first arises from article 143 whereby the court may decide to hold the hearing in camera, either of its own accord or at the request of the Public Prosecutor's Office, in order to safeguard public order or morality; while the second exception relates to the case when a minor is being tried, the only persons permitted to attend the proceedings being the witnesses in the case, close relatives, the guardian or legal representative of the minor, the legal counsel, the representatives of child-welfare associations, services or institutions and probation officers (article 240 of the Code of Penal Procedure). Judgements are always pronounced in open court. It was recently decided that divorce proceedings should be held in camera with a view to safeguarding family secrecy.

153. The guarantee of rights must not stop at the judgement, it is also necessary for the judgement to be enforced. Article 64 of the Constitution states that "Judgements shall be rendered in the name of the people and shall be executed in the name of the President of the Republic". In civil and commercial cases, every judgement must include an enforcement formula requesting the responsible officials of the Public Prosecutor's Office and the law enforcement officers to assist in the execution of the judgement (article 252 of the Code of Civil and Commercial Procedure). A judgement remains valid for 20 years from the day on which it has been pronounced (article 257). The Code of Civil and Commercial Procedure devotes its title III to methods of enforcement. In administrative matters, the decision that an administrative action is null and void requires the Administration to re-establish in its entirety the legal situation amended or rendered non-existent by the decision thus annulled (article 9 of the Act of 1 June 1972). Wilful failure to apply the decisions of the Administrative Tribunal constitutes a serious offence for which the administrative authority concerned is liable (article 10 of the same Act). In practice, the Tunisian Administration itself ensures that decisions by the Administrative Tribunal are applied.

154. The second paragraph of article 14 of the Covenant coincides exactly with the provisions of article 12 of the Constitution, which states: "Everyone charged with a penal offence shall be presumed innocent until proved guilty at a trial at which he has had all the guarantees necessary for his defence." The rules contained in the Code of Penal Procedure are based on this presumption of innocence. During the preliminary examination the defendant is simply a person who has been accused, during the trial he is an indicted person but, unless and until his guilt has been established by the competent court, he is not a convicted person. The function of the examining magistrate is to make a diligent search for the truth and to take note of all the facts likely to assist the court in reaching its decision (article 50 of the Code). The search for the truth implies examining all the evidence whether for the prosecution or the defence. The interrogation should provide the accused with an opportunity of clearing himself (article 69). If this is not done, the examining magistrate commits the accused for trial (article 150).

155. Tunisian criminal law provides all the guarantees stipulated in article 14 (3), of the Covenant. These guarantees are included in the Code of Penal Procedure.

(a) A person detained under a warrant of arrest must appear before a court within three days of his admission to the public prison (article 79). On the first appearance of the accused, the examining magistrate is required to acquaint him with the charges against him and the legislation applicable

(article 69). The language used by the courts is Arabic and, in the event that the accused does not speak that language, an interpreter is automatically appointed by the magistrate;

(b) During the first appearance of the accused, the examining magistrate cannot receive any statement from him until he has been informed of his right not to reply except in the presence of a lawyer of his choice. A mention that this has been done must be included in the records (article 69). If the accused refuses to select a lawyer, or if the latter having been duly summoned does not appear, the magistrate may then proceed further. If the accused has not already selected a lawyer, once he is indicted and requests a defence counsel, a lawyer must be appointed for him (article 69). Article 72 of the Code provides that, unless the accused expressly renounces his right thereto, he can be interrogated only in the presence of his counsel. By attending the interrogation, the counsel for the defence is enabled to exercise real control over the action of the examining magistrate; he also helps by his presence to put the accused at his ease. If the latter produces evidence in his defence, the examining magistrate is required to verify it as soon as possible. To enable him to prepare the defence, the counsel has the opportunity of consulting the file on the day prior to the interrogation, thus rendering his role still more effective, particularly since the file made available to the counsel must be a complete one and the examining magistrate may question the accused solely on the basis of the documents included therein (article 72). The right of the accused to communicate with his counsel cannot be derogated from in any circumstances;

(c) The right to be tried without undue delay. We have had occasion to speak of this point in the comments on article 9. It is the practice of the courts to give priority to bringing to trial persons remanded in custody. Pre-trial detention is, in fact, an exceptional measure in the sense of article 84 of the Code. Act No. 87-70 of 26 November 1987, which amended certain articles of the Code of Penal Procedures has limited the duration of such detention for crimes and offences (see commentary to article 9 of the Covenant). Release pending trial can be granted at any time. The aforesaid Act includes some effective means of appealing against any decision rejecting the application for release. Such a decision, which must be made within four days of the application, has to be reconsidered by the Committal Chamber within eight days of its receipt of the file (new article 87 of the Code of Penal Procedure). All these provisions are designed to shorten as far as possible the period between the indictment and the trial. We may add that the Code provides, for obvious humanitarian reasons, that appeals against decisions involving a sentence of capital punishment are to be considered to the exclusion of all other business (article 258).

(d) The Code of Penal Procedure obliges a person accused of a crime or of an offence carrying a prison sentence to appear in person. In other cases, the accused may either be represented or appear in person (article 141). Article 147 provides for one exception: if the accused is disrupting the proceedings by his behaviour, he may be removed from the court. The accused is questioned by the President of the Court (article 143). The accused must be summoned either administratively or by means of a writ served by a bailiff. The summons must indicate the deed with which the accused is charged and quote the text of the Act making it an offence. It must give details of the court concerned with the case and the place, time and date of the hearing (article 135). This gives the accused the time and the information needed to prepare his defence, since article 136 provides that at least three days must elapse between the day that the summons is delivered and the day set for the

appearance in court. Before the Criminal Court, the assistance of a counsel for the defence is compulsory. If the accused does not select a counsel, the President of the Court will appoint one of his own accord (article 141). The counsel defends the accused in accordance with the law and with due regard for his interests;

(e) the accused may request that witnesses be heard. If this is refused, a formal decision must be taken complete with the grounds therefor (article 144). The decision may be annulled if the grounds are deemed inadequate;

(f) The proceedings take place in the Arabic language. In the event that the accused does not speak that language, an interpreter is appointed by the court. The same applies to any witnesses;

(g) According to Tunisian law, the judge reaches his decision on the strength of his "reasonable certitude" in the light of the evidence submitted to him. That evidence may include a confession. It must be emphasized, however, that a confession by an accused is not decisive and is not binding on the judge, who is free to appraise it like any other item of evidence (article 152 of the Code of Penal Procedure).

156. The procedure applicable to minors under the criminal law. This matter came up in the comments under article 10 of the Covenant with respect to the punishment of juvenile offenders. Article 224 of the Code provides that: "Minors between 13 and 18 years of age charged with an infraction regarded as a crime or offence are not brought before the ordinary criminal courts. They can be tried only by the children's judge or the Minors' Criminal Court." The concern of the legislature is to do everything possible to reintegrate such minors into social life and to prevent them from growing up in a delinquent or prison environment which it would be very difficult to make them forget later. The terms used in the Code, especially in article 225, reflect this concern quite clearly: "The children's judge and the Minors' Criminal Court shall, according to the merits of the case, order such measures of protection, assistance, supervision and education as they deem appropriate. They may, however, where the circumstances and the personality of the delinquent appear to warrant this, hand down a penal sentence against a minor of over 13 years of age, in which case the sentence is served in a special type of establishment." The children's judge - or examining magistrate - is required to compile, by means of a social investigation, information on the material and moral situation of the family and on the character and background of the minor. He then orders, by a decision giving his reasons, that the minor be placed in a specialized institution or handed over to his parents or guardian. The hearing is not in public and only certain persons are authorized to attend. The judge can, at any time, order that the minor withdraw during all or part of the rest of the proceedings. The same rules apply to the Minors' Criminal Court (article 240).

157. Article 14 (5) of the Covenant states that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. As mentioned above, Tunisian law has established the rule of two-tier jurisdiction. Offences judged by the cantonal judge can be reconsidered on appeal by the court of first instance (article 124 (2) of the Code of Penal Procedure). The cantonal judge is competent for minor offences

(article 123). The court of appeal considers, in second instance, offences judged by the court of first instance (article 126). The court of first instance judges, in first instance, all offences except those that are within the competence of the cantonal judge. There are two noteworthy exceptions: the first, that mentioned in article 123 of the Code of Penal Procedure, is that the cantonal judge has the final say in cases of petty offences. It is considered, in fact, that petty offences do not warrant the possibility of appeal. The second is laid down in article 128 of the Code, which provides that the Criminal Court, which is competent in criminal matters, shall always have the final say. This is explained by two fundamental factors: the composition of this Court (five judges) and the fact that a judgement handed down by it necessarily follows a preliminary examination undertaken by a specialist judge - the examining magistrate - and reviewed by the Committal Chamber consisting of a President and two Counsellors. The Committal Chamber is obliged to examine the file prepared by the examining magistrate. In any case the absence of the two-tier jurisdiction does not imply that there is no control whatsoever by a superior court. An appeal for cassation can be made against a decision by the cantonal tribunal having the final say and against substantive decisions by the Criminal Court. The grounds for such an appeal may be incompetence, abuse of authority, miscarriage of justice or false application of the law.

158. Tunisian law enables judicial decisions to be reviewed for the purpose of rectifying an error of fact made to the detriment of a person convicted of a crime or offence (article 277). The cases in which such a review can be opened, the procedure therefor and the effects thereof are prescribed in article 277 et seq. of the Code of Penal Procedure. The commission that is responsible for revising certain provisions of the Code of Penal Procedure is considering the possibility of introducing a procedure for compensation in the event of a miscarriage of justice perpetrated to the detriment of a person convicted of a crime or offence.

159. Lastly, it should be emphasized that the Code of Penal Procedure establishes "the res judicata as one of the reasons for the termination of a prosecution" (article 4). Thus, a person who has been the subject of a final judgement by reason of an offence cannot be prosecuted again for the same offence, whether the judgement was one of acquittal or conviction.

160. All these guarantees were offered to the accused belonging to the movement known as "Ennahdha" on the occasion of the Bab-Saâdoun and Bouchoucha trials which took place before the Military Tribunal at Tunis in July 1992. Both trials were conducted with the utmost transparency and in a climate of complete frankness in the presence of the public, international observers and representatives of NGOs, including Amnesty International, and of the international press.

161. With regard to the competence of military tribunals it should be pointed out that the criminal acts committed by the accused in this case fall within the purview of military justice by virtue of the provisions of articles 5 to 8 of the Code of Military Justice. The competence of the military court in this case is based upon the fact that many of the accused belonged to the armed forces. It extends to the civilian co-perpetrators or accomplices by virtue of the "one justice" principle according to which only one judgement is handed down in a case where the accused belong to both categories. The appearance of the accused before this court does not deprive them of their fundamental rights of

defence, since military courts offer the same legal guarantees as do civilian ones.

162. As for the pre-trial investigation, it was entrusted to two military examining judges who follow a procedure identical with that of examining magistrates within the civil courts system. Before the interrogation, the judges informed the accused of their right to be assisted by lawyers who could be present at the interrogation. Several lawyers thus attended the interrogations of their clients. Their requests and observations were recorded in the protocols of the pre-trial examination, and they were given access to all the documents on the file in order to be able to defend their clients.

163. Furthermore, while there is no possibility of appeal against the judgements of military courts, it should be pointed out that appeal is guaranteed at the pre-trial examination stage. Appeals against the decisions of the examining magistrate can be brought before the Indictment Division. According to articles 29, 30 and 31 of the Code of Military Justice, applications for judicial review may be brought against decisions of the Indictment Division. As for the judgements handed down by the Military Court, the fact that they are adopted on a first and last resort basis offers a unique possibility of appealing against them by means of an application for judicial review.

J. Article 15. Non-retroactivity of criminal laws

164. Article 15 establishes the rule of the non-retroactivity of criminal law, save in the case of lighter penalties. Article 13 of the Constitution embodies the rule of the non-retroactivity of criminal law in these terms: "Penalties are personal and may be imposed only under a law enacted prior to the commission of the offence". The rule of the non-retroactivity of criminal law thus has a constitutional authority and is binding not only on the judge but also on the legislature. The rule is taken up in the Tunisian Penal Code, article 1 of which states: "No one shall be punished except by virtue of a provision in an already existing law". The same article establishes a development of the rule along the lines of article 15 of the Covenant by providing that: "If, subsequent to the commission of the offence, but prior to the final judgement, provision is made by law for the imposition of a lighter penalty, this law only shall apply."

K. Article 16. Legal personality

165. Under the provisions of this article, everyone has the right to recognition everywhere as a person before the law. Under Tunisian law, such legal personality is accorded to every individual at birth. This status exists of itself and regardless of the individual's ability to express his will. A child already conceived when a question of succession arises shall stand to inherit (article 147 of the Code of Personal Status), but shall do so only if born alive. Thus, the individual is a subject of law and has the capacity of enjoyment from birth. The possessor of the right can in all cases exercise his rights through a representative where he is unwilling to do so himself.

166. The recognition of legal personality not only entails the enjoyment of rights, but must also permit the exercise of such rights. Under Tunisian law, majority is automatically attained at 20 years of age (article 153 of the Code of Personal Status, article 7 of the Code of Obligations and Contracts, article 4 of the Code of Nationality). Minors are considered as having no legal capacity and thus as unable to exercise their rights. Children of less than 13 years of age are regarded as being without discretion and must be represented by their legal guardian. From 13 to 20 years of age, minors are regarded as having only partial legal capacity and must, in principle, be assisted by father or guardian (article 6 of the Code of Obligations and Contracts). The courts may grant limited emancipation in respect of certain acts or absolute emancipation in the case of minors who have reached the age of 15. It should be recalled, moreover, that the reformed draft Code of Personal Status provides for the emancipation through marriage of women aged less than 20 years.

167. Persons who have reached majority may lose their legal capacity if affected by insanity, or if they become prodigal or feeble-minded. Such measures are in all cases subject to a court ruling. These incapacities give rise to total representation or simply to assistance on the part of the legal guardian (articles 153-170 of the Code of Personal Status). In any event, no individual may be deprived of his legal personality. Tunisian law does not recognize civil death. The individual never loses his legal personality, regardless of his circumstances and place of residence. The exercise of the rights inherent in legal personality by virtue of the concept of capacity is closely bound up with consent. The individual concerned must have the maturity or sound mental faculties to properly appreciate the extent of his obligations.

L. article 17. Privacy

168. Under article 17 of the Covenant, no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. Tunisian law prohibits the interference and attacks referred to in article 17 and protects individuals against such acts.

169. Article 64 of the Press Code prohibits reporting on cases of defamation of character where the allegations concern private life, and on cases dealing with recognition of filiation, divorce and abortion. The publication of judgements in such cases is subject to authorization by the court. Again with a view to preserving the individual's right to privacy, article 64 prohibits the use of sound recording apparatus, photographic or film cameras during hearings without the authorization of the competent legal authorities. Again with the same end in view, the law does not accept evidence of the act giving rise to the allegation where it concerns private life. There are no exceptions with regard to personal privacy (article 57 of the Press Code). As already stated in the comments regarding article 14 of the Covenant, under article 117 of the Code of Civil Procedure, the court may decide to hear a case in camera in order to safeguard the inviolability of family secrecy, and parties to the proceedings may themselves request that the case be heard in camera. Under the Code of Penal Procedure, the court may decide to hear a case in camera to protect morality, (article 143). It prohibits reporting on proceedings before the children's judge: the judgement rendered by the judge may be published, on condition that no indication of the minor's name is given, even in the form of an initial. The Penal Code provides for severe penalties for the disclosure of confidential information, in particular by persons who, by virtue of their

profession, come into possession, in one way or the other, of such information concerning the private lives of individuals (article 254). There are a number of laws binding members of professions to professional secrecy (banking: Act of 7 December 1967; lawyers: Act of 15 May 1958; doctors: Code of Ethics of 20 October 1973). Magistrates are also subject, by virtue of their status, to the obligation of professional secrecy.

170. The secrecy of correspondence is guaranteed by the Constitution (article 9). As illustrated by the discussions in the Constituents Assembly, correspondence is interpreted very broadly to include any means of communication. The Penal Code sanctions the unauthorized disclosure of the contents of another person's correspondence (article 253). Only one exception exists based on considerations of public safety and order. Article 99 of the Code of Penal Procedure allows the examining magistrate to order the seizure of any object, correspondence or other dispatch which he considers may be useful in revealing the truth. Similarly, the Public Prosecutor may order correspondence addressed to or coming from an accused person to be sought and seized, but may examine it only if delay would involve danger.

171. The Constitution guarantees the inviolability of the home, except in special cases provided for by law (article 9). This guarantee is ensured by a number of legislative provisions. The Penal Code penalizes those entering or remaining on premises used for habitation against the will of the owner (article 256). Any attempt to do so is punishable. The practice of the courts is to apply this article even to owners entering premises used for habitation against the will of the tenant. The penalty is even more severe if the offence is committed during the night, in a group, by breaking and entering, or if the perpetrators are armed (article 257). Article 102 of the Penal Code prescribes penalties for public official or person in a similar capacity who, without observing the required formalities or without any demonstrable need, enters the residence of a private person against the latter's will. The principle of the inviolability of the home is subject to a number of exceptions stipulated by law for the maintenance of public order and safety or for the enforcement of judicial decisions. Thus article 93 of the Code of Penal Procedure permits searches to be carried out in all places where there may be objects whose discovery would be useful in ascertaining the truth. Since there is a limit to the inviolability of the home, the law has made the act of search subject to a number of rules designed to confine this limitation to its intended purpose. House searches may be carried out only by the judicial police officers listed in article 94 of the Code and by public officials and agents of the authorities authorized to do so by law. All searches must be carried out by day, except in the case of a gross crime or offence or when there are grounds for entry, even without the consent of the master of the house, for the purpose of apprehending an accused person or arresting an escaped prisoner. In the absence of the accused, the examining magistrate may order two witnesses from among the occupants of the house, or failing that neighbours, to be present and to sign the report. The second exception concerns the enforcement of judicial decisions of a civil or commercial character. Under article 294 of the Code of Civil and Commercial Procedure, the court bailiff may enter the premises where the order is to be carried out. If he is prevented from doing so, or if the doors are closed, he is prohibited from entering and must call upon the police for assistance.

172. Tunisian law protects all individuals against any attack on their honour and reputation. Honour and reputation are fundamental attributes of the human personality. The Penal Code and Press Code list the offences constituting

attacks on honour or reputation. These are defamation, insult, slander and slanderous allegation. Defamation is defined in article 245 of the Penal Code and article 50 of the Press Code. It consists in any public allegation or imputation concerning a fact which impugns the honour or reputation of a person or an established body. Defamation is punishable by six months' imprisonment and a fine (article 247 of the Penal Code). Defamation in the press or by any other means of dissemination is punishable, even if the defamation is expressed with an element of doubt. As stated earlier, evidence of the defamatory fact is not admissible when it concerns personal privacy (new article 50 and 57 of the Press Code). Insult is described in article 54 of the Press Code as an outrageous expression, a term of contempt or invective which does not contain an imputation of any specific fact. When it is perpetrated in the press against individuals, insult is punishable by imprisonment and by a fine, or by either of these two penalties, when it is delivered without provocation. Slander is a punishable offence. It exists when the defamatory fact has been judicially declared not proved, or when the person called on to furnish evidence of the fact is unable to do so. In the case of slanderous allegations, the penalty is more severe. A slanderous allegation is one made against one or more individuals to any administrative or judicial authority with the power to act on it (articles 246 and 248 of the Penal Code).

M. Article 18. Freedom of thought, conscience and religion

173. Article 18 of the Covenant guarantees freedom of thought, conscience and religio... This freedom is guaranteed in article 5 of the Constitution, which states: "The Republic of Tunisia guarantees the dignity of the individual and freedom of conscience, and protects the free exercise of religion, provided that it does not disturb public order". Freedom of conscience means that every individual is free to adopt any belief or religion. There are no rules compelling an individual to embrace one religion in preference to another or to adopt any religion at all. That is a matter of the private belief of the individual. Article 1 of the Constitution proclaims Islam to be the religion of the Tunisian State. It is the religion of the great majority of Tunisians. However, this does not imply any constraint whatsoever in the case of non-Muslims.

174. The National Covenant signed on 7 November 1988 between representatives of the political parties, professional organizations and social associations states that "human rights imply a guarantee of freedom of opinion and of expression, freedom of the press and of publishing, and freedom of worship". It adds that "the protection of the fundamental freedoms of human beings calls for the inculcation of the values of tolerance, the rejection of extremism and of violence in all its forms, and non-interference in the convictions and personal conduct of others otherwise than through mercy and forgiveness, in order that religion may remain free from constraint". Consensus has been reached on the point that mosques, as "houses of God", should be kept aside from political struggles and sedition and should be devoted entirely to God. Moreover, and with a view to avoiding the exploitation of mosques for political and partisan ends, an Act relating to mosques was adopted on 3 May 1988. Its object is to avoid mosques being used as a framework for religious and partisan struggles by fundamentalist elements who made improper use of holy places in order to recruit adherents, foment factional strife and advocate armed struggle in the hope of overthrowing the existing social order and replacing it by a theocratic one.

175. As already stated, Islam is proclaimed by the Constitution to be the religion of the Tunisian State. But the Constitution also guarantees the free exercise of other religions. Accordingly:

(a) More than 5,000 Tunisian nationals are of the Jewish faith. An Act of 11 July 1958 concerning the practice of the Jewish faith establishes one Jewish cultural association in each governorate. These associations are responsible for organizing religious teaching and for the management of the institutions providing it. The Chief Rabbi is appointed by decree following the normal consultations and, like other leading national figures, is received by the Head of State;

(b) The practice of the Catholic faith is governed by an international agreement concluded between Tunisia and the Holy See on 27 June 1964. Under it, the Tunisian Government protects the free practice of the Catholic religion and the Church undertakes to refrain from any activity of a political nature in Tunisia. The Church is represented by a prelate appointed by the Holy See.

176. The free exercise of religions other than Islam is guaranteed by the Constitution. Any persons hindering or disrupting the practice of a religion are liable to criminal prosecution. Article 165 of the Penal Code lays down a penalty of six months' imprisonment and a fine for anyone impairing or disrupting the practice of a religion or religious ceremonies, notwithstanding the more severe penalties which would be incurred in cases of outrage, acts of violence or threats. Under article 166, anyone who, without any legal authority over a person, forces that person by violence or threats to practise or refrain from practising a religion is liable to a term of imprisonment of three months.

N. Article 19. Freedom of opinion and expression

177. Article 19 of the Covenant concerns freedom of opinion. This freedom is guaranteed under article 8 of the Constitution, which concerns not only the individual expression of opinions, but also their dissemination by all communications media, with a view to making others aware of them. The article states that "Freedom of opinion, expression, the press, publication ... is guaranteed and shall be exercised in accordance with the law".

178. Freedom of opinion is protected by law, even in the case of agents of the State or similar officials. Article 10 of Act No. 83-112 of 12 December 1983, regarding the general status of civil servants, local public authorities and public institutions of an administrative nature, provides that "under no circumstances may the personal file of the official contain a reference to his political, philosophical or religious opinions". The same provision is contained in the general regulations relating to agents of offices, public institutions of an industrial and commercial nature and national corporations. The Act, which considers the press as the mainstay of freedom of opinion, further strengthens the freedom of opinion in the case of journalists or employees of press enterprises. For example, employees of press enterprises are entitled to terminate the contract binding them to that enterprise without prior notice if a change occurs in the character or policy of the newspaper or the enterprise and if that change creates for the person employed a situation injurious to his honour or reputation or, in general, to his moral interests. What is worth noting here is that, although it is a unilateral decision taken

without prior notice, the termination of the contract by the employee entitles him to compensation of up to the equivalent of 15 months' pay (article 400 of the Labour Code).

179. The press represents the mainstay of the freedom of opinion and expression. Organic Law No. 88-89 of 2 August 1988 amending and completing the Press Code strengthens in practice the principle of freedom of the press. Thus it is no longer possible to suspend a periodical by the mere decision of the Public Prosecutor. The suspension of a periodical for a given period may only be ordained by the Tribunal of First Instance which decides on the merits. However, the Minister of the Interior may, with the advice of the Minister of Information, seize any issue of a periodical the publication of which is liable to disturb public order (article 73 new of the Press Code). This article specifies in its first paragraph that a compensation for the prejudice incurred may, in such cases, be requested in accordance with the prevailing legal provisions. This last provision was added as a deterrent against all abuses. The creation of a new periodical is subject only to prior notification to the Ministry of the Interior. A receipt is issued to the director of the periodical. A refusal, giving the reasons, or lack of response on the part of the authorities may be appealed against on the grounds of misuse of authority to the Administrative Tribunal, in accordance with the conditions laid down in the Act of 1 June 1972 concerning the Administrative Tribunal (article 13). The publication, introduction and circulation in Tunisia of foreign periodicals require no prior authorization. However, foreign periodicals may be prohibited by the Minister of the Interior, on the recommendation of the Minister for Information, where they present a danger to public order or national security.

180. The freedom of the press is thus fully exercised under the protection of the law. However, a number of obligations intended basically to protect others are imposed on the mass media in the interest of public safety and order, morality and the rights of others. Accordingly:

(a) Every periodical must meet the obligation of registration for copyright. Registration for copyright enables the nation to preserve these publications (article 2 et seq.). For this reason, the Code exempts certain other printed materials from this obligation. Thus, under article 3 of the Press Code, "printed matter serving an administrative or commercial purpose, as well as ballot papers and securities, shall not be subject to registration for copyright".

(b) Any person or body attacked by the press may make known his point of view or state his own version of the acts or statements attributed to him. The director of the periodical is required to insert, free of charge, the corrections or replies addressed to him. Refusal to do so is punishable by a fine (articles 26 et seq.);

(c) The Code prohibits the publication of indictments before they are read in public hearing and of certain trial proceedings concerning the private life of an individual or the defamation of persons holding public office (articles 64 et seq.);

(d) As stated in the comments relating to article 17 of the Covenant, the Code penalizes crimes and offences committed through the press such as defamation or insult. These offences carry more severe penalties when directed against official bodies, the army or the administration.

181. The freedom of the press is limited only where the rights of others have been violated. In any event, assessment of the facts is the responsibility of the judge, who alone is authorized to suspend publication of the periodical for a given period.

182. Today, no less than 115 periodicals are published in Tunisia, including 64 Arabic-language ones and 28 French-language ones. There are eight daily papers, including five in Arabic (Essabah, El Horia, Essahafa, Echourouk and Errai El Am) and three in French (Le Renouveau, La Presse and Le Temps). Four opposition parties have their own newspapers. The same is true of the trade unions and the professional associations. In addition, 516 foreign periodicals, including 60 dailies, are sold through the trade. There are 650 practising professional journalists in Tunisia and 51 foreign press attaches, 21 of them representing foreign press agencies.

183. Furthermore, in the desire to improve the legal and practical framework for the universal enjoyment of the freedom of opinion and expression, a Higher Council for Communication was established on 30 January 1989. The Council is an advisory body whose purpose is "to contribute towards the elaboration of a communications policy aimed essentially at enabling citizens to realize their right to a free and pluralistic communications system" (Decree No.89-238 of 30 January 1989). Decree No.92-1758 of 5 October 1992 amending and expanding the above-mentioned document increased the number of the Council's members to 15 and expanded its powers. Article 1 of this Decree provides that the Council shall be consulted on the subject of legislative texts and decrees relating to general orientations in the fields of information and communication.

184. In addition, the Government accords advantages of all kinds to assist publishing houses. These include:

(a) Reduction of customs duties on imports of newspaper materials (paper, ink, equipment, etc.);

(b) Circulation of newspapers abroad is assured by means of free transport on the national airline, Tunis-Air;

(c) Circulation of newspapers within the country is facilitated by special low rates (post, railway, national and regional transport companies);

(d) The right to operate two licences for passenger transport, which supplements resources substantially;

(e) The supply, free of charge, of a set of foreign newspapers to all publishing houses;

(f) Reduction of the salaries and wages tax for press employees.

185. Since the beginning of 1988 the State has also subsidized national newspapers in order to compensate for the ever-increasing cost of newsprint and thus to remedy the financial difficulties felt especially by the newspapers belonging to opposition parties.

186. The State has also decided to take over 60 per cent of the newsprint costs of the opposition parties' newspapers, which from 1991 onwards are receiving a financial subsidy of 30,000 dinars granted by the Government.

187. Lastly, it should be noted that in the early 1980s, the monopoly on distribution of foreign books, held until then by a national corporation, was abolished. Importers are now free to choose the titles which they wish to purchase.

188. Since 7 November significant progress has been achieved as regards the freedom of the press. The Press Code was amended in 1988 with the aim of strengthening the freedom of opinion and expression. Pluralism has also been consolidated in the official media, with the result that the opposition parties have been able to make themselves heard and to participate in televised debates on topics of national interest.

189. The Government's will to strengthen the democratic process and to ensure greater de facto freedom of the press confirms its dedication to the cause of developing a free and responsible press. On 4 November 1992, the Council of Ministers considered a draft Organic Law amending the Press Code. The new text introduces changes in most of the articles of the Press Code, and particularly in those concerning freedom of expression and opinion. It also includes several provisions aimed at developing the system of registration of copyright, reducing the number of violations and introducing the principle that proof of a defamatory act must be brought in all cases.

O. Article 20. Prohibition of propaganda for war and any advocacy of hatred, hostility or violence

190. Article 20 of the Covenant prohibits any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The article calls on States Parties to the Covenant to adopt legislative measures to introduce the above-mentioned prohibitions.

191. Tunisian law contains a number of provisions for the punishment of racial or religious hatred. In addition, Tunisia ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1966, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1972, and the Convention on the Suppression and

Punishment of the Crime of Apartheid in 1976. Under article 161 of the Penal Code, anyone who destroys, defaces, mutilates or defiles religious buildings, monuments, emblems or objects is liable to a one-year prison term and a fine. Attempts to commit such acts are also punishable. The same penalties are applicable to persons found guilty of defacing or destroying objects kept in religious buildings (article 163). As stated earlier in the comments relating to article 18 of the Covenant, obstruction of the practice of religion is punishable (articles 165 and 166).

192. Under article 44 of the Press Code, the use of the press or any other intentional means of propaganda to provoke racial hatred or offences against a religion is subject to a penalty of two months' to three years' imprisonment and a fine. Offences committed through the press or any other intentional means of propaganda against a religion are punishable by imprisonment for three months to two years and a fine (article 48 of the Press Code).

193. In cases of defamation and insult committed against a group of persons belonging to a particular race or religion with a view to stirring up hatred, the Press Code provides for more severe penalties than those for the same offences committed against individuals (article 53 (2) and article 54 (3)).

194. Organic Law No. 88-32 of 3 May 1988 organizing political parties has obliged the parties to "banish violence under all its forms, as well as fanaticism, racism and all other forms of discrimination" (article 2). This organic law considers unlawful all slogans calculated to promote or encourage violence with a view to disrupt public order or generate hate among citizens" (article 17). By virtue of the above law "a political party may not rely fundamentally in its principles, activities and programmes, on a religion, a language, a race, a sex or a region" (article 2).

195. Although no legal provision expressly prohibiting propaganda for war exists, Tunisians, who are peace-loving by nature, do not engage in such propaganda. Tolerance and respect for differences are deeply rooted in the national consciousness. The authors of the 1959 Constitution proclaimed the determination of the Tunisian people to work for peace (preamble to the Constitution).

P. Article 21. Right of assembly

196. Article 21 of the Covenant recognizes the right of peaceful assembly subject to restrictions imposed in the interests of national security, public safety and public order, or by the need to protect public health or morals, or the freedom of others. The freedom of assembly is guaranteed by the Constitution (article 8) and is exercised in the conditions stipulated by law. Article 1 of Act No. 69-4, of 24 January 1969, regulating public meetings, processions, parades, demonstrations and assemblies, stipulates that public meetings may be held freely. They may be held without prior authorization, but there are a number of formalities to be observed. Advance notice must be given, and for each meeting there must be a committee responsible for maintaining order and preventing any breach of the law. The responsible authorities may prohibit by decree any meeting likely to be detrimental to public safety or to law and order. Such decrees are subject to appeal to the Administrative Tribunal on the grounds of action ultra vires. The security authorities assign an official to

attend each public meeting. The official is authorized to declare the meeting dissolved at the request of the committee responsible or if clashes or acts of violence occur. Processions and parades may be held freely, but prior notice is required. The authorities may prohibit by decree any demonstration likely to be detrimental to public safety or law and order. Armed processions, parades and demonstrations are prohibited.

Q. Article 22. Freedom of association and freedom to form and join trade unions

197. Article 22 guarantees freedom of association and freedom to form and join trade unions. Article 8 of the Constitution guarantees "freedom of association" and "the right to form and join trade unions". Reference is made to an organizational act for the definition of the conditions in which the freedom of association may be exercised.

198. The legislation on associations has been amended in a more liberal sense by Organic Law No. 88-90 of 2 August 1988 which amended and completed Act No. 59-154 of 7 November 1959. An association is defined as "an agreement by which two or more persons pool, on a permanent basis, their knowledge or activities for a purpose other than that of sharing profits" (article 1). The constitution of an association which was, under Act of 1959, formerly subject to an authorization of the Minister of the Interior, who disposed of discretionary powers has now become by virtue of the law of 1988, subject to the simple following formalities: a declaration addressed to the Governorate or Delegation in which the head office is situated. After a period of three months from the submission of the declaration and in the case of silence from the part of the Administration "the association shall be legally constituted and may then exercise its activities as from the publication of an extract of the association's internal regulations in the Official Journal of the Tunisian Republic" (new article 4).

199. In the case of a decision of refusal for the constitution of the association, the founders have a right of appeal under the procedure regarding excess of powers provided for by Act No. 72-40 of 1 June 1972 relating to the Administrative Tribunal (new article 5). Article 2 of Act No. 59-154 of 7 November 1959 as amended in 1988 provides for restrictions similar to those referred to in article 22 (2) of the Covenant by stipulating that "the cause and object of such an agreement shall, under no circumstances, be contrary to the law or to morals, likely to disrupt public order or detrimental to the integrity of the national territory or to the republican form of the State". Any duly constituted association may, without any special authorization, institute legal proceedings, make purchases and possess and manage movable or immovable property closely linked with its purpose. Foreign associations may obtain an authorization to operate in Tunisia. Almost 6,000 associations are currently functioning in Tunisia under the Act. The areas of activity are very varied. In recent years, associations have undergone unprecedented expansion encompassing all aspects of life: social, cultural, sporting, scientific, literary, artistic, legal and so on.

200. The Associations Act of 7 November 1959 (No. 59-154) has been supplemented by Organic Law No. 92-25 of 2 April 1992. The purpose of the new law is to involve associations in the strengthening of the democratic process and protect them from the risks of politicization or partisan exploitation. In that

connection, the text of the law is clear. It stipulates that "associations of a general nature cannot refuse membership to any persons who promise to respect their principles and decisions, unless those persons are not in possession of their civil and political rights or if their activities and practices are incompatible with the association's goals. In the event of a dispute concerning the right of membership, a person applying for membership may refer the matter to the court of first instance of the place in which the association has its headquarters".

201. As regards implementation, this means that the conditions and modalities for joining the association remain within the competence of the associations as laid down in their internal regulations. The associations alone are empowered to accept or reject the membership of anyone who does not promise to respect their principles or whose activities and practices are incompatible with their objectives. No membership application can be imposed on the associations. However, an applicant whose request for membership is rejected may turn to the competent court. The above-mentioned Act of 2 April 1992 thus lays down a general principle of law, which enables all citizens to have recourse to the system of justice to safeguard their constitutional rights. This principle is provided for in article 14 of the International Covenant on Civil and Political Rights.

202. The new law also prohibits the holding of responsibilities within organizations of a general nature in conjunction with responsibilities in the central management of any political party. This incompatibility is of a temporary nature, since it is for those concerned to choose between the two responsibilities. Thus, there is nothing to prevent someone from founding or joining an association of a general nature while assuming responsibilities in the central management of a political party.

203. The amendment of the Associations Act is in no way intended to restrict the right of associations to choose their members. It is in conformity with the provisions of international conventions and of the Tunisian Constitutions and its object is certainly not to infringe the freedom to form or join associations. It applies to more than 5,000 associations and is designed to avoid their being exploited for partisan ends or having their activities politicised.

204. The objectives of this new law are simple and in no way intended to limit a right which Tunisia has fully endorsed. Avoiding the exploitation of associations for political ends is a necessity if democracy is to be preserved. The new law is meant to consolidate the role of associations by confirming citizens in the democratic values of tolerance, peaceful debate and participation in the management of the nation's affairs.

205. In view of the important role played by parties in public life and State institutions the Tunisian legislators, under the above-mentioned Organic Law No. 2 May 1988, have made an act making the political parties subject to special regulations which, while ensuring their freedom, will at the same time impose on them obligations concerning the protection of the rights of the individual and of the community at large. Under the terms of the law, the political parties are unrestricted, their formation is authorized by the public authorities and the denial of an authorization can be appealed against. They are entitled to bring together Tunisian citizens with a view to organizing

their participation in national political affairs under a political programme and to participating in elections (article 1). They must act in accordance with the Constitution and the law, eschew violence and fanaticism, respect and defend the republican system, the sovereignty of the people as organized under the Constitution, the attainments of the nation since independence, in particular the principles embodied in the Code of Personal Status, and human rights (article 2). No party may present itself as the party of one particular race, region or ethnic group (article 3). The participation of political parties in democratic institutions presupposes that, in the inner workings of a party, democratic principles must be observed. The ideals of democracy must be learned within the parties themselves, and the bill imposes on political parties the obligation to organize themselves on democratic lines (article 5). Any grave breach of the provisions of the Organic Law on political parties can entail dissolution. Such dissolution, however, may only be ordered by a judgement of the Court of First Instance of Tunis on the application of the Minister of the Interior (articles 19 and 20). It may be noted that there are at present seven legally authorized parties, three of which were authorized in 1988 alone.

206. Furthermore, it should be noted that the Government associates the political parties, within the framework of the Higher Committee of the National Covenant, in the shaping of the country's policies in a number of nationally important sectors. Party leaders are regularly received by the Head of State, who entrusts them with tasks abroad or inside the country (an example of this is the participation of the General Secretary of the Socialist Democrats' Movement in the Committee for Safeguarding the University). The leaders of opposition parties are likewise invited to take part in major national debates, such as that on the preparation of the plan of economic and social development.

207. The political parties receive subsidies which enable them to meet their expenses. They are also entitled to a special endowment making it possible for them to publish their opinion periodicals (80,000 US dollars per periodical per year).

208. Article 3 of the Political Parties Act stipulates that "no party may present itself as the party of one particular race, religion or ethnic group". It is precisely on the basis of this Act, which is fully in conformity with the International Covenant on Civil and Political Rights, that religious groups such as the "Ennahdha" movement have been banned. This movement pursues the goal of abolishing the republican regime and replacing it by a theocratic State whose authority would not be derived from universal suffrage. The movement has been banned because it is founded upon the principle of discrimination between religions and it incites to hatred between peoples and different religions. Other reasons justifying the prohibition of the "Ennahdha" movement include its non-acceptance of the democratic system and its many public and private calls for the establishment of a State founded upon a totalitarian ideology which completely rules out any debate or competition between different ideas.

209. Trade union freedom is governed by articles 242-271 of the Labour Code. The right to organize is accorded to all occupational categories. Under the general regulations pertaining to them, public officials have the right to form trade unions (article 4 of Act No. 83-112 of 12 December 1983). Other workers, whether in the private or public sectors, are accorded the right to organize under the Labour Code and the basic collective convention approved in 1973.

Under article 242 of the Labour Code, trade unions or professional associations may be set up freely. No authorization is required, the only formality to be completed for the formation of a trade union being the deposit of its statutes with the headquarters of the governorate or "delegation" which is territorially competent. However, the Code prohibits trade unions from being set up as sections of foreign trade union organizations (article 253). Aliens may join trade unions, but may not be appointed to administrative or executive posts in a trade union without the approval of the Minister of Labour (article 251). As trade unions, they must limit their activities exclusively to defending the economic and social interests of their members. The natural corollary of freedom to organize is the right to strike, which is recognized under the Labour Code. However, strikes may be called only as a result of a collective labour dispute. They must be preceded by a conciliation procedure and by advance notice of 10 days, after approval by the trade union federation. Trade unions are represented in the Economic and Social Council, which is a body set up under the Constitution to give its views on economic and social matters. Trade unions are also authorized under the law to conclude labour agreements with employers.

210. In accordance with article 22 (2) of the Covenant, the law places some restrictions on the freedom of association and the right to form and join trade unions in respect of certain persons or socio-professional categories. By virtue of the nature of their functions, members of the armed forces and of the internal security forces are prohibited from forming or joining a political party or political association. Members of the armed forces or of the internal security forces may be authorized to join social, cultural or sporting associations. Members of the internal security forces may form friendly, sporting, cultural or welfare associations. Members of the armed forces and internal security forces are prohibited from forming or joining trade unions and thus do not have the right to strike.

211. Shortly after acceding to independence in 1957, Tunisia ratified ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, adopted by the International Labour Conference on 9 July 1948. This Convention is thus incorporated into Tunisian law and is applied in conformity with its provisions.

R. Article 23. Protection of the family and right to marry and to found a family

212. Article 23 of the Covenant concerns the protection of the family as the natural and fundamental group unit of society. In Tunisia, protection of the family is proclaimed by the Constitution as one of the major concerns of republican institutions.

213. A few months after independence, a Code of Personal Status was promulgated, thus laying the foundation for a modern, strong and prosperous family unit. However, the efforts of the legislature did not stop there, and the progressive development of family law has been a continuous undertaking. It is not possible to deal with all aspects of the protection of the family in this report. However, it is possible to provide a few basic data which have a direct bearing on article 23 of the Covenant. In 1964, for example, Tunisia adopted a voluntary birth control programme designed to promote families which are balanced in every respect. A national family planning office set up in 1971 and

named the National Office of Family and Population Affairs in 1984, is actively involved in the implementation of the democratic policy of Tunisia and in the preparation of action programmes for the development of the family and the protection of its equilibrium. Basic family health services have also been set up throughout Tunisia to provide essential mother and child care and, in particular, to undertake preventive measures for the benefit of the family. Free medical care is provided to low income families and there is an active and continuously expanding policy of social welfare.

214. In the desire to protect and promote the rights of the Tunisian family, and in order to enhance the efficacy of Government policy in this field, the President of the Republic on 17 August 1992 appointed a Secretary of State in the Office of the Prime Minister to be responsible for women's and family matters. His duties are as follows: to participate in the elaboration of Government policy in connection with the promotion of women and the family; to propose draft legislation and regulations, as well as programmes designed to guarantee the promotion of the family and fuller integration of women in the development process; to coordinate the activities of various institutions working on behalf of women and the family, and to evaluate their impact.

215. Moreover, the President of the Republic has, by his Decree No.92-2136 of 7 December 1992, ordered the establishment of the National Commission on Women and the Family. This Commission, composed of representatives of various governmental structures, representatives of national organizations and associations and persons chosen for their competence in the field of women's and family matters, is mandated to assist the Government in outlining activities and strategies with a view to achieving objectives connected with improving the status of women and of the family in Tunisia.

216. Furthermore, by Decree No.92-1296 of 13 July 1992 the President of the Republic instituted the "President's Prize for the Promotion of the Family". This decree, which repealed Decree No.88-1820 of 25 October 1988 instituting and organizing the "President's Prize for the Promotion of Family Planning", provides in its article 3: "The national prize is awarded in the form of a gold medal to an individual or a public establishment or a national or foreign institution having contributed directly or indirectly to the promotion of the Tunisian family, the protection of family health and the success of family planning programmes in Tunisia or for the benefit of Tunisian emigrants abroad".

217. In order to ensure the good health of the family, a certificate to be issued prior to the celebration of a marriage was introduced in 1964. It should be noted, however, that the introduction of this certificate in no way impedes the right to marry, but is intended essentially to draw the attention of the prospective spouses to the harmful effects that dangerous diseases, particularly tuberculosis and syphilis, could have for their partners or progeny. Article 1 of the relevant Act stipulates that the physician should state on the medical certificate only that the individual concerned has been examined with a view to marriage. Admittedly, the Act authorizes the physician to refuse to issue the certificate if he considers the marriage to be undesirable or to postpone issuing it until such time as any disease diagnosed is no longer contagious or until the health of the examinee no longer presents a danger for his or her progeny. However, the matter is left to the discretion of the physician and the free will of the prospective marriage candidate.

218. The right to marry is recognized for both men and women without any discrimination whatsoever, as is shown by the various provisions of the Code of Personal Status. Registrars are obligated to marry aliens governed by their own Code of Personal Status; article 38 of Act No. 57-3 of 1 August 1957, governing civil status, provides that the registrar must celebrate "the marriage act of aliens in accordance with Tunisian law, upon production of a certificate from their consul stating that they may marry". Consequently, there is no restriction on the right to marry except in the case of two categories of public officials, where the marriage can take place after permission has been obtained from the authorities. The two categories concerned are diplomats and members of the armed forces. By virtue of the nature of their functions, these persons may not enter into marriage with persons who might place State secrets at risk. As stated earlier in paragraph 27 under the comments relating to article 3, with a view to ensuring the validity of the commitment of the prospective spouses, the law sets a minimum age for marriage. Similarly, the Code of Personal Status makes marriage a matter for the spouses alone by providing that marriage is contracted only by the consent of both spouses (see paragraph 27). Where the consent is subsequently shown to be invalid, the marriage may be annulled (article 21).

219. It hardly seems necessary to reiterate here what has already been stated in detail on the equality of rights and responsibilities of the spouses with regard to the marriage and upon its dissolution. However, the main points are as follows:

(a) The law provides for complete equality with regard to consent, impediments to marriage mainly on moral and health grounds (article 14) and the prohibition of polygamy and polyandry. The only differences that can exist in this regard are the minimum age for marriage and the dowry which the husband must present to his wife. However, while the dowry remains a condition of the marriage contract, it is actually only symbolic, having its historical origin in Islamic law. The age difference is a recognition of a sociological fact. Men always marry later than women. In any event, with the spread of education, young men and women today marry in Tunisia after these minimum ages. It should be noted in this regard that, in 1968, Tunisia ratified the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages;

(b) Equality during marriage has been dealt with in the comments regarding article 3. However, it may be noted that the law has established the régime of separation of property (see paragraph 31) and accorded to both husband and wife the right to give their nationality to their children (see paragraph 28). Article 23 provides for reciprocal rights with regard to responsibility during marriage (see paragraph 35);

(c) Equality of the spouses in the event of divorce is complete, as amply described in paragraph 32. However, by providing for judicial divorce, Tunisian law has endeavoured to protect the family. In addition, with a view to protecting the interests of the children of a broken home, the law provides, in the Code of Personal Status, for their protection upon the commencement of divorce proceedings. Article 32 of the Code of Personal Status requires the court, in the event of the failure of conciliation efforts, to take urgent measures concerning the custody of the children and visiting rights. Such measures are enforceable, notwithstanding an appeal. In the event of divorce and in the absence of any agreement, custody of the children is decided by the court in accordance with their interests. Maintenance of the children continues

to be the obligation of the father, regardless of who has custody, unless otherwise agreed by the father and mother. The mother may challenge such an agreement at any time. In the event of the father's failure to fulfil his undertaking to pay alimony and child maintenance, the State substitutes itself for the defaulting father by paying, without delay and in toto, the amounts of the allowances decided by the judge. A special State fund has been created to this end in order to ensure continuity of alimony and child maintenance payments. The State will henceforth be able to prosecute any divorced father who fails to honour his financial obligations vis-a-vis his former spouse and his children. In the case of a son, child maintenance is paid until the boy reaches majority or completes his schooling. In the case of a daughter it is paid even beyond majority if the girl has no other source of income, and until her marriage.

S. Article 24. Protection of children

220. Article 24 of the Covenant guarantees that the child shall have, without any discrimination whatsoever, the protection required by his status as a minor, on the part of his family, society and the State. Tunisian positive law contains a range of provisions designed to provide the child with maximum protection without any discrimination as to race, sex, religion, etc.

221. The Act of 1 August 1957 regulating civil status requires the father or in his absence, the physician, midwife or other persons present at the birth, to declare the birth within 10 days of the delivery (article 22 and 24). Under article 25, failure to make such a declaration is punishable by imprisonment and a fine. The birth certificate is drawn up immediately upon declaration of the birth (article 24). The certificate must indicate the forenames to be given to the child, as well as the forenames, surnames and nationality of the father and mother. The law requires every Tunisian national to have a patronymic name (Act No. 59-53 of 26 May 1959 on the patronymic name). To avoid the possibility of a child being without a name, Act No. 85-81 of 11 August 1985 requires the public guardian of children of unknown parentage or abandoned children to "choose a forename and a patronymic name for such children if neither of the parents has claimed a parental relationship with the children in question within a period of three months after the children have come under the care of the competent authorities" (article 1 of the Act of 11 August 1985).

222. The child has the right to filiation. Legitimate paternal filiation is established by cohabitation (marriage), acknowledgement by the father or the evidence of two or more honourable persons (article 68 of the Code of Personal Status). Annulment of the marriage has no effect on the establishment of filiation bonds (article 22 of the Code of Personal Status). By virtue of the non-existence of natural filiation in Tunisian law, the Tunisian courts often take the view that the child of an engaged couple is born of a null and void marriage, in order to establish legitimate filiation. In addition, By Act No. 58-27 of 4 March 1958, the Tunisian legislature established adoption as a means of filiation. Article 15 of the Act provides that the adopted child has the same rights and obligations as a legitimate child. In order to ensure that children are placed in a favourable family environment, the adoptive parent must, except in special cases, be married and of good moral character. The consent of the spouse is necessary. There must be at least 15 years' difference between the ages of the adoptive parent and the adopted child, who must in all cases be a minor. Tunisian nationals may adopt aliens. A child born out of wedlock is attached to its mother (article 152 of the Code of Personal Status).

The above-mentioned Act of 4 March 1958 provides that children found or abandoned are placed in the custody of the State (article 1). The legal guardian has the same rights as the father and mother in respect of the ward. The legal guardian may be the administrator of the hospital, hostel or nursery, or the director of the re-education centre or children's home, where the child has been entrusted to one of these establishments. In other cases, the legal guardian is the governor. In order to promote the placement of children in foster homes, the above-mentioned Act provides for an informal guardianship which enables families to assume responsibility for a child (article 3). The State has also set up a National Institute for the Protection of Children responsible, inter alia, for carrying out studies and research into matters relating to children, particularly abandoned and maladjusted children, to promote adoption and placement of abandoned children in foster homes and to manage children's homes entrusted to it by the State (Decree No. 73-8 of 8 January 1973 on the organization of the National Institute for the Protection of Children).

223. Filiation, whether legitimate, maternal or adoptive, imposes upon the parents a maintenance obligation in respect of the child (article 43, 46 and 47 of the Code of Personal Status). Maintenance is defined in article 50 of the Code as comprising food, clothing, housing, education and anything deemed to be necessary to life according to custom and usage. A legal guardian has the same obligation to provide for the child. This also applies to an informal guardian. The legitimate child inherits from his mother and father and, if the occasion arises, from their ascendants. Under article 15 of the Act of 4 March 1958, an adopted child has the same rights as a legitimate child.

224. A child born out of wedlock inherits from its mother and from her parents (article 152 of the Code of Personal Status). The Nationality Code makes no distinction as far as the granting of nationality to children is concerned. It provides for all sorts of possible ways of granting nationality to children. Two categories can be distinguished:

(a) The first relates to the granting of nationality by virtue of filiation. The Nationality Code attributes Tunisian nationality to a child born of a Tunisian father; a child born of a Tunisian mother and an unknown father or a father with no nationality or whose nationality is unknown; and a child born in Tunisia of a Tunisian mother and a foreign father. A new draft of a reformed Nationality Code, currently under discussion, allows a child born of a Tunisian mother and a foreign father to acquire Tunisian nationality even if he or she was not born in Tunisia.

(b) The second category is the granting of nationality by virtue of birth. Tunisian nationality is granted to: a child born in Tunisia whose father and paternal grandfather were also born there (article 7); a child born in Tunisia of stateless parents who have resided in Tunisia for not less than the previous five years (article 8); a child born in Tunisia of unknown parents (article 9).

225. In addition, article 25 of the Nationality Code stipulates that an unmarried minor whose father or widowed mother acquires Tunisian nationality automatically becomes Tunisian, except where otherwise provided by the naturalization decree.

226. In order to ensure appropriate conditions for the development of the child, a number of institutions have been created with the object of organizing a "third environment" for children and keeping them safe in cases where both parents are working. Such institutions include:

(a) Day care centres: Decree No. 82-1598 of 15 December 1982 concerning the conditions for the opening of day-care centres defines the task of such institutions as receiving and accommodating during the day children of less than three years of age. Children are provided with the care necessary for their physical, mental and emotional development;

(b) Kindergartens: these are pre-school educational institutions for children of three to six years of age. They constitute a link between the family and the school, supplementing the education given by the family and preparing the child for the education he will receive at school. The organization of kindergartens is governed by the decree of the Minister for Youth and Sports of 28 January 1974;

(c) Children's clubs: these are intended for children of up to 14 years of age, providing them with educational activities supplementing the education they receive in the family and school environments by the full and harmonious development of all their abilities (Decree No. 69-6 of 4 January 1969, relating to kindergartens and children's clubs).

(d) Education: Since independence Tunisia has invested a great deal in its educational system. Education at all levels (primary, secondary and higher) is guaranteed to all Tunisians, free of charge and without any discrimination whatsoever. Article 7 of Act No.91-65 of 29 July 1991 instituting a new educational system provides as follows: "Basic education shall be compulsory from the age of 6 years until the age of 16 years for all students capable of regularly pursuing their studies in accordance with the regulations in force".

227. The same Act states in its article 1 that one of the major objectives of the educational system is to prepare young people for a life that has no room for any kind of discrimination or segregation based on sex, social origin, race or religion. Another objective is to offer students the chance to develop their personalities and help them to achieve maturity through their own efforts by instilling in them the values of tolerance and moderation.

228. Protection of the rights of children constitutes the cornerstone of the policy of the Tunisian Government, which is ever mindful of strengthening child care structures and creating conditions favourable to the development of the personality of the child of today. Tunisia's ratification in 1991 of the United Nations Convention on the Rights of the Child testifies to the Government's goodwill to continue working towards this end.

229. The minimum age for employment is 18 years. However, in view of the importance attached to providing young people with vocational training which will enable them to acquire a trade, the law sets a minimum age for the employment of young people as apprentices. This age is set at 15 in industrial establishments. In agricultural activities, the minimum age is lowered to 13, provided that the work is not detrimental to the health of

intellectual development of children and that school attendance is not affected (articles 53 and 55 of the Labour Code).

230. It is worth noting that, by a decree of May 1988, a Superior Council for Child Affairs has been set up. This Council has the following tasks, in particular:

- "To contribute to the definition of a coherent strategy promoting Childhood and the satisfaction of its health, affective, educational, recreational and social needs and the coordination of the efforts made by the various ministries and agencies concerned;

- To identify all action capable of developing children's aptitudes and to contribute to the development and the achievement of their aspirations and autonomy;

- To propose measures tending to protect children from abandonment, ill-treatment, exploitation and all forms of handicaps and to strengthen the role of the family in the satisfaction of children's needs;

- To propose measures tending to develop the protection of children with specific needs such as handicapped children, delinquents, children in need and without support, and to promote the role of non-governmental associations and organizations in the care, educational and re-adaptation of these children."

231. Moreover, with the aim of strengthening the framework structures for Childhood and guaranteeing children's protection and the conditions required for their development, it has been decided since February 1989 to entrust only one ministry, to be designated as the Ministry of Childhood and Youth.

T. Article 25. Participation in public life

232. Article 25 of the Covenant sets forth the right of every citizen, without discrimination, to take part in the public life of his country. Such participation implies, inter alia, the right of every citizen to vote and to be eligible for election and to have access, on general terms of equality, to the public service. The Constitution provides an opportunity for citizens to take part directly in the conduct of political affairs by means of a referendum which is specified in articles 2 and 47. A referendum is mandatory in the case of treaties relating to the integration of the Maghreb, if the nature of these treaties is such as to require any amendment to the Constitution (article 2). The President of the Republic may also submit to a referendum any bill relating to the organization of public authorities or to the ratification of treaties which, without infringing the Constitution, will affect the working of the institutions (article 47). All citizens who are voters participate in the referendum (article 135 of the Electoral Code).

233. In other respects citizens take part in the conduct of public affairs through freely chosen representatives. Article 18 of the Constitution provides that: "The people shall exercise legislative power through a representative assembly". The members of this assembly are freely chosen (article 19). The Chamber of Deputies is elected for a term of five years (article 22). Article 72 of the Electoral Code provides as follows: "The number of members of the Chamber of Deputies and that of seats allocated to each constituency shall be established by decree on the basis of one deputy per 60,000 inhabitants. The number of seats allocated to a constituency cannot in any event be less than two." And it goes on to provide as follows: "Where the number of inhabitants of a constituency remaining after the number of seats allocated to it has been determined is greater than 30,000, an additional seat shall be attributed to that constituency." Citizens also take part in the conduct of local affairs through the election, for a term of five years, of municipal councillors who make up the councils of the communes (article 111 of the Electoral Code). At the time of preparation of this report (November 1991) Tunisia had 250 communes, accounting for 65 per cent of the country's population. The Constitution and the Electoral Code (as amended by Organic Law No. 88-144 of 29 December 1988) have established the conditions that a person must meet in order to have a vote. These conditions do not embody any of the distinctions mentioned in article 2 of the Covenant. Article 20 of the Constitution provides that: "Every citizen who has possessed Tunisian nationality for not less than five years and is over 20 years of age shall be an elector". Article 2 of the Electoral Code elaborates on article 25 of the Constitution by specifying that the right to vote is granted to Tunisian men and women who are in possession of their civil and political rights. The new Article 3 of the Code specifies the cases in which citizens are not entitled to vote, namely, if they are undischarged bankrupts, or have been convicted of crimes or offences and sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding six months. It is quite normal that such persons should be deprived of the right to vote, since their anti-social behaviour is incompatible with it. However, article 4 of the Code excludes from these cases convictions for negligence. Persons of unsound mind who have been committed to an institution and persons who have been placed under legal guardianship are not entitled to vote. The reason is obvious: they lack the healthy mental capacity required to express a valid intent. In addition, members of the armed forces on the active list cannot exercise the right to vote (new article 3 of the Electoral Code) in view of the nature of their duties. Every voter is registered on an electoral roll; if not, he is entitled to ask for such registration. If this is refused, he is entitled to apply to a Review Board, whose decisions may be appealed against to the courts.

234. The qualifications for election vary according to cases:

(a) Any voter of the commune who has attained the age of 25 may stand for election to its municipal council (new article 112 of the Electoral Code), subject to certain cases of ineligibility. These relate to officials of various kinds who have positions of responsibility for or relationship with the commune. Some cases of incompatibility are also specified to prevent two or more members of a single family from being elected to the same municipal council (articles 113 new and 117);

(b) In the case of elections to the legislature, any male citizen who is a qualified voter, the son of a Tunisian father and has attained the age of 28 is eligible (new article 76). The Electoral Code also specifies some cases of ineligibility, relating to the President and members of the

Constitutional Council, the President and members of the Economic and Social Council, governors, judges, certain regional administrative authorities and some cases of incompatibility between the function of deputy and the holding of certain offices (civil servants, international civil servants or officials of a foreign State and heads of public enterprises - new articles 77 and 80 of the Electoral Code). Article 88 of the Electoral Code provides as follows: "Deputies shall be elected on a single ballot by voting for candidates on the list or lists, the seat being assigned to the candidates having obtained the majority of votes with panachage (voting for candidates from different parties instead of for the set list of one party). Voters may strike out the names of candidates, and may replace them by those of candidates from other lists. A new ballot system designed to consolidate political pluralism in Parliament is to be adopted in anticipation of the next parliamentary elections scheduled for April 1994.

(c) In the case of presidential elections, the candidate must fulfil the following conditions: be a qualified voter; be a Muslim; be of Tunisian nationality since birth without interruption and have only this nationality; be of Tunisian father, mother and paternal and maternal grandparents who have all been Tunisian nationals without interruption; be 40 years old at least and 70 years old at the most (new article 64 of the Electoral Code). The religious qualification is to be explained, on the one hand by the demographic make-up of Tunisia, virtually all Tunisians being Muslims, and on the other hand by article 1 of the Constitution which makes Islam the religion of the State, thereby implying that the Head of State must be a Muslim.

235. Out of a concern to guarantee voters optimum conditions so that they can freely express their wishes, the Constitution and the Electoral Code state that elections shall take place by free, direct, universal and secret ballot. The electoral law lays down the conditions for the electoral campaign, the voting, the counting of the votes and the announcement of the results. The Electoral Code specifies for the national and municipal elections the use of the party list with the possibility of cross-voting. The President of the Republic is elected by a majority vote on a single ballot.

236. The Electoral Code, which was amended by Organic Law No.30 of 4 May 1990, adopted the system of proportional representation of allocation of seats on municipal councils. The list of candidates which obtains the majority of seats no longer receives all the constituency's seats but, rather, 50 per cent of those seats, the rest being attributed to all the lists in accordance with the proportional representation rule, i.e. in proportion to the votes obtained. A list which fails to obtain a minimum of 5 per cent of the votes has no right to be represented.

237. This system achieves three objectives: it guarantees a majority on the municipal council and incites the smaller parties to form coalitions or be content with a minimal representation, thus avoiding dispersal of public funds due to a proliferation of artificially created parties.

238. In his speech on 27 December 1992 the President of the Republic announced that draft legislation concerning the amendment of the system of voting in parliamentary elections, now in preparation, is to be submitted to the Chamber of Deputies. The new Electoral Code combines the majority list rule with that of proportional representation - a new system which incorporates a

part of the proportional representation system in the majority system and is designed to enable opposition parties to be represented in Parliament, thus consolidating political pluralism within Parliament.

239. During the election campaign, the candidates of all lists are treated equally by the administration (special places for bill-posting, radio-television programmes, etc.). The Organic Law of 29 December 1988 amending the Electoral Code added an article 45 bis providing for the possibility of refund of the charges for the printing of voting ballots and electoral posters for candidates or lists of candidates under certain conditions. In the case of presidential elections, a refund is provided for when the candidate has obtained at least 5 per cent of the votes. In the case of other elections, a refund is provided for when the candidate or list of candidates has obtained at least 3 per cent of the votes at the level of the electoral district. The same above-mentioned organic law provides for the first time the possibility for Tunisians residing abroad to exercise their right to vote for the elections of the President of the Republic (new articles 7 and 68).

240. Similarly, regarding control of the regularity of elections, the above organic law amending the Electoral Code provides in article 106 new and 106 bis for a commission presided by the President of the Constitutional Council and including the first president of the Administrative Tribunal and the first president of the Supreme Court of Appeal. By virtue of new article 106, any candidate to legislative elections may challenge the regularity of the candidature, that of the electoral operations as well as the results within a period of three working days following the proclamation of the results by the Minister of the Interior. The said Commission must decide on the matter within a period of five days as from the expiry date of the appeal. The President of the Commission can, if necessary, extend this period a single time by fifteen days.

241. As regards the control of the regularity of presidential elections, it must be specified that it is article 40 (new) of the Constitution which gave competence in the matter to a commission presided by the President of the Chamber of Deputies and including the President of the Constitutional Council, the Mufti of the Republic, the first president of the Supreme Court of Appeal and the first president of the Administrative Tribunal. This Commission "rules upon the validity of the candidatures, proclaims the result of the ballot and rules on the requests submitted on the matter" (new article 40 of the Constitution). It is worth noting, finally, that for municipal election, the electoral disputes are of the competence of a commission presided by a magistrate designated by the Minister of Justice, and including two voters designated by the Minister of the Interior.

242. In addition, to meet the concern of the last paragraph of article 25 of the Covenant, we may recall that the equality of access of citizens to public service is guaranteed by the Civil Servants' General Status Act (Act No. 83-112 of 12 December 1983). Access to the civil service is open to all Tunisian citizens over 18 years of age who are in possession of their civic rights and are of good moral standing. There is no discrimination (article 17). Article 10 forbids the inclusion in an official's personal file of any reference to his political, philosophical or religious opinions. Article 11 states that no distinction is to be made between the two sexes, apart from special provisions required by the nature of the duties.

U. Article 26. Equality before the law and equal protection of the law, without discrimination

243. Article 26 sets forth some general provisions concerning the equality of all persons before the law and their entitlement without discrimination to the equal protection of the law. All the way through this report, the constitutional and legislative measures establishing the equality of all before the law and the equal protection of the law have been detailed. Consequently, it does not seem necessary to summarize these rules by referring to the corresponding paragraphs of the report.

244. It might, however, be mentioned that, because of its attachment to the principle of equality, Tunisia has ratified a number of treaties and conventions prohibiting various forms of discrimination. We may recall, once again, that such conventions have a legal value superior to those of ordinary laws and are binding on the judge. The following are some of the conventions that Tunisia has ratified:

(1) International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1966);

(2) Convention concerning Discrimination in respect of Employment and Occupation - ILO Convention No. 111 (ratified in 1959);

(3) The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value - ILO Convention No. 100 (ratified in 1968);

(4) Convention against Discrimination in Education, adopted by the General Conference of UNESCO (ratified in 1969);

(5) Protocol relating to the Status of Refugees (ratified in 1968);

(6) Convention relating to the Status of Stateless Persons (ratified in 1969);

(7) International Convention on the Suppression and Punishment of the Crime of Apartheid (ratified in 1968);

(8) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (ratified in 1968);

(9) Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985);

(10) Convention on the Nationality of Married Women (ratified in 1967);

(11) Convention on the Political Rights of Women (ratified in 1967);

(12) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratification without reservation in 1988); and

(13) Convention on the Rights of the Child (ratified in 1991).

V. Article 27. Rights of ethnic, religious or linguistic minorities

245. Article 27 of the Covenant guarantees that, where ethnic, religious or linguistic minorities exist, they are entitled to enjoy their own culture, to profess and practise their own religion, or to use their own language.

246. Before beginning the comments on this article, it would be useful to give a few indications of the demographic composition of the population which, ethnically speaking, is very homogeneous. It consists essentially of Muslim Arabs of the Malikite rite. Religious sects are virtually non-existent. There is no self-contained community with its own particularly geographical location which asserts its specific character. The last population census revealed that the number of non-Muslim Tunisians was barely more than 5,000.

247. This non-Muslim population consists mainly of Tunisians of the Jewish Community, which enjoys all the rights set forth in article 27 of the Covenant. As has already been pointed out, in the comments on article 18 of the Covenant, this community has freedom to practise its religion (cf. para. 116). It might be added that Act No. 58-78 of 11 July 1958 concerning the Jewish faith contains all the provisions needed to ensure that this minority enjoys its own culture, professes and practises its own religion and uses its own language. To that end, article 2 of the Act recognizes to the Jewish cultural associations, as institutions serving the public interest, the right to ensure:

(a) The organization and upkeep of synagogues;

(b) The supervision of the ritual slaughter and the provision of unleavened bread and kosher food products, with the assistance of the rabbis;

(c) Assistance of a cultural nature to members of their community; and

(d) The organization of religious teaching.

The Jewish cultural associations are subsidized by the local authorities.

248. We may recall that the law punishes any obstruction to or disturbance of religious worship (cf. para. 117); punishes anyone who by means of the press or by some other intentional means of propaganda incites to racial hatred or offence against one of the forms of religious worship (cf. para. 125); and punishes also defamation and insult perpetrated for the purpose of stirring up hatred against a group of persons who, by their origin, belong to a particular race or religion (cf. para. 126).

249. We should also recall that Tunisia is a party to the International Convention on the Elimination of All Forms of Racial Discrimination. It has submitted eight periodic reports on the application of that Convention to the Committee on the Elimination of Racial Discrimination. It submits periodically reports on the state of application of this Convention.